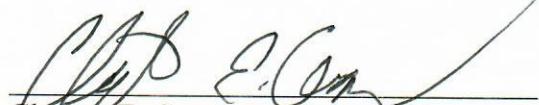


DECLARATION OF CLAYTON E. CRAMER

I, Clayton E. Cramer, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct.

1. I have been asked to review the January 18, 2023, Declaration of Robert Spitzer and render a rebuttal opinion of the matters contained therein.
2. This declaration is based on my own personal knowledge and experience, and if I am called to testify as a witness, I could and would testify competently to the truth of the matters discussed in this declaration.
3. I have been retained by the National Association for Gun Rights to render expert opinions in this case. I am being compensated at a rate of \$75 per hour.
4. My rebuttal of the Spitzer Declaration is attached as Exhibit 1.
5. My CV is attached as Exhibit 2



Clayton E. Cramer
February 10, 2023

EXHIBIT A

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1. This Rebuttal Declaration to Prof. Spitzer demonstrates errors of fact, including misrepresentations of the statutes at the cited locations. Because these false and misrepresented statutes are so widespread, and some are at the Duke Law Center for Firearms Law, “Repository of Historical Gun Laws,” where they show up on Google searches, I have included images of the printed title pages and statutes.

I. INTRODUCTION

2. The current effort to restrict semiautomatic rifles of an often military appearance and what defendants call Large Capacity Magazines (LCMs) started after a mentally ill drifter with a history of involuntary commitment and a spotty record of outpatient treatment, ended his suffering by committing mass murder with an AK-47 pattern rifle. Tragically, he received a Social Security Disability check which enabled him to remain homeless while buying guns and ammunition. As the California Dept. of Justice’s official report observed:

In an ideal world, ample resources would have been available to detect his problems, identify them as potentially dangerous and likely to result in his life being uselessly wasted, and to provide for a type of intervention with a reasonable prospect of making a difference. However, in a world in which government spending has to recognize realistic limits set by the public, such resources will never be plentifully available.¹

This is an especially painful paragraph for me. My smarter, older brother’s spiral down into schizophrenia resulted in brushes with law but never with such a horrible ending. It was still a life wasted by California’s confused and irrational mental health policy, one which spread across the country in the 1970s. Early news reports concerning the Highland Park mass murderer suggest that he might well have benefitted from treatment: “Police removed 16 knives, a dagger and a

¹ Nelson Kempsky, *A Report to Attorney-General John K. Van de Kamp on Patrick Edward Purdy and the Cleveland School Killings*, October, 1989, 19, <https://schoolshooters.info/sites/default/files/Purdy%20-%20official%20report.pdf>, last accessed November 26, 2022.

sword after a family member reported that [alleged murderer] was going to “kill everyone.”² Of course, mental health treatment costs money, unlike drawing chalk marks around bodies, postmortems, counseling for the survivors, and lawsuits defending laws passed in reaction to unimaginable horror.

3. At ¶13: “While weapons capable of firing rounds in rapid succession can be traced to guns of the late nineteenth and early twentieth centuries, like the hand-cranked, multi-barreled Gatling gun which could fire up to 200 rounds per minute,”: This is incorrect as to origin. Puckle first demonstrated his gun to the British military in 1718. “It could fire nine shots per minute at time when the standard musket could be loaded and fired only once or twice per minute.” Its failure to become widely manufactured was “because British gunsmiths at the time couldn’t make the many complicated parts.”³ “As rudimentary and clumsy as it seemed, Puckle’s gun is a direct ancestor of the modern machine gun.... [A]t a public trial held in 1722, the gun was able to fire 63 shots in seven minutes in the midst of a driving rainstorm, an amazing feat for the period.”⁴ At ¶36, Spitzer claims, “This weapon “never advanced beyond the prototype stage.” There seems to be question about that: “There is some evidence that the Duke of Montagu purchased two of the guns, using them to arm his expedition to colonize the West Indies, but there is no record that they were actually used.”⁵

4. At ¶13 “[The Gatling Gun] and its successors were military weapons designed to be used in combat...” During the New York City Draft Riots of 1863, mobs threatened abolitionist newspapers:

² Melissa Espana, Sam Charles, Ben Bradley, Sean Lewis, Andy Koval, Kelly Davis, *Alleged Highland Park parade shooter charged with 7 counts of first-degree murder*, WGN: Jul. 5, 2022, <https://wgntv.com/news/highland-park-parade-shooting/charges-to-be-announced-in-highland-park-mass-shooting/>, last accessed January 30, 2023.

³ Katherine McLean Brevard, THE STORY OF GUNS: HOW THEY CHANGED THE WORLD 34 (2010).

⁴ James H. Willbanks, MACHINE GUNS: AN ILLUSTRATED HISTORY OF THEIR IMPACT 23 (2004).

⁵ Id.

At Newspaper Row, across from City Hall, Henry Raymond, owner and editor of *The New York Times*, averted the rioters with Gatling guns, one of which he manned. The mob, instead, attacked the headquarters of abolitionist Horace Greeley's *New York Tribune* until forced to flee by the Brooklyn Police.⁶

It appears the New York Times editor was not completely persuaded of Edward Bulwer-Lytton's "The pen is mightier than the sword."⁷

5. Prof. Spitzer acknowledges at ¶15: "Guns like the Tommy gun and the BAR were actually used relatively infrequently by criminals generally..." Also at ¶19: "Newspaper reports of criminal use of Tommy guns were few, small, and spare until 1926, when a few very sensational news reports of their criminal use received widespread and extensive attention in newspapers across the country."

6. This is much like today. The Northeastern University/USA Today mass murder database tracks every mass murder from 2006 to the present. "Semiautomatic handguns are far more common in mass killings than guns that are typically classified as assault weapons. According to Fox, handguns are easily concealable and some can be equipped with large-capacity magazines. In this database, the long guns category includes any gun larger than a handgun, including rifles and shotguns."⁸

7. Mass murders are a fraction of 1% of all U.S. murders⁹ but they are click-bait for dying, legacy news organizations and therefore receive very high coverage. If they involve an "assault

⁶ *How to Escape the Draft*, NEW YORK TIMES, <https://archive.nytimes.com/www.nytimes.com/learning/general/onthisday/harp/0801.html>, last accessed December 13, 2022.

⁷ Alison Gee, Who first said 'The pen is mightier than the sword'?, BBC, Jan. 9, 2015.

⁸ *Mass killing database: Revealing trends, details and anguish of every US event since 2006*, USA TODAY, Jan. 27, 2023.

⁹ See *Public Mass Shootings in the United States: Selected Implications for Federal Public Health and Safety Policy*, CONGRESSIONAL RESEARCH SERVICE 2 (2013) which identified "78 public mass shootings... since 1983" killing almost 550. By comparison, there were 12,253 murders (single or mass) in 2013 alone. FBI, Crime in the United States, Expanded Homicide Data Table 1, https://ucr.fbi.gov/crime-in-the-u-s/2013/crime-in-the-u-s-2013/offenses-known-to-law-enforcement/expanded-homicide/expanded_homicide_data_table_1_murder_victims_by_race_and_sex_2013.xls, last accessed January 28, 2023.

weapon,” even more so. Media attention helps unstable people to identify what sort of weapon to use for maximum attention when they decide to go out in a blaze of infamy.

II. State-Level and Nationwide Attempts to Regulate Automatic and Semi-Automatic Firearms in the Early Twentieth Century

8. This entire section of Spitzer’s declaration is irrelevant because of the 1868 cut off date set in Bruen, but is worthy of examination for what it tells of us the accuracy of his work. In ¶ 21, Spitzer suggests that state machine-gun laws adopted “between 1925 and 1933” played some part in pushing Congress to pass the Mailing of Firearms Act of 1927 to “restrict the interstate shipment of guns.” The Mailing of Firearms Act has a somewhat different origin, unrelated to machine guns.

Senator John K. Shields, a Tennessee Democrat, introduced a bill in the United States Congress to prohibit the shipment of pistols through the mails and by common carrier in interstate commerce. Shields inserted into the record a report which supported his bill based on the following:

Can not we, the dominant race, upon whom depends the enforcement of the law, so enforce the law that we will prevent the colored people from preying upon each other? . . .

Here we have laid bare the principal cause for the high murder rate in Memphis—the carrying by colored people of a concealed deadly weapon, most often a pistol.
...

It is unspeakable that there is public sentiment among the whites that negroes should not be disturbed in their carrying of concealed weapons. . . .¹⁰

9. Spitzer at ¶¶25-26 quotes approvingly Attorney General Cummings testimony before the Ways and Means Committee concerning the National Firearms Act (1934), but seems to have missed a revealing discussion between Cummings and members of the Committee:

Mr. McCLINTIC. I would like to ask just one question. I am very much interested in this subject. What in your opinion would be the constitutionality of a provision added to this bill which would require registration, on the part of those who now own the type or class of weapons that are included in this bill?

¹⁰ Stephen P. Halbrook, 62 TENNESSEE LAW REVIEW 597, 601 (Spring, 1995) quoting 65 Cong. Rec. 3945, 3946 (1924)

Attorney General CUMMINGS. We were afraid of that, sir.

Mr. MCCLINTIC. Afraid it would conflict with State laws?

Attorney General CUMMINGS. I am afraid it would be unconstitutional.¹¹

The proponent of a machine gun regulatory law argued that requiring just *registration* was unconstitutional. Imagine his reaction to the Highland Park ordinance!

10. A bit further into the discussion:

Mr. LEWIS. Now a very brief statement on this subject: Lawyer though I am, I have never quite understood how the laws of the various States have been reconciled with the provision in our Constitution denying the privilege to the legislature to take away the right to carry arms. Concealed-weapon laws, of course, are familiar in the various States; there is a legal theory upon which we prohibit the carrying of weapons — the smaller weapons.

Attorney General CUMMINGS. Of course we deal purely with concealable weapons. Machine guns, however, are not of that class.

Do you have any doubt as to the power of the Government to deal with machine guns as they are transported in interstate commerce?

Mr. LEWIS. I hope the courts will find no doubt on a subject like this, General; but I was curious to know how we escaped that provision in the Constitution.

Attorney General CUMMINGS. Oh, we do not attempt to escape it. We are dealing with another power, namely, the power of taxation, and of regulation under the interstate commerce clause. You see, if we made a statute absolutely forbidding any human being to have a machine gun, you might say there is some constitutional question involved. But when you say "We will tax the machine gun" and when you say that "the absence of a license showing payment of the tax has been made indicates that a crime has been perpetrated", you are easily within the law.

Mr. LEWIS. In other words, it does not amount to prohibition, but allows of regulation.¹²

The Attorney General of the United States sought a law to deal with a very real problem, organized crime and the much less organized gangs such as John Dillinger and Bonnie & Clyde, and yet he thought the Constitution prohibited the national government from banning private ownership of machine guns! Nor did Cummings disagree with Rep. Lewis' belief that the "right to carry arms" imposed some restriction. If Rep. Lewis was not referring to the Second

¹¹ National Firearms Act, Hearings Before The Committee On Ways And Means House Of Representatives, 73rd Cong.. 2nd sess. 13 (1934).

¹² *Id.*, at 19.

Amendment, to what *was* he referring? Rep. Lewis' lack of understanding why the “right to carry arms” did not apply to the states reflects the Court’s hesitant steps towards incorporation of the Bill of Rights to the states. Bruen has clearly incorporated those rights, and it is hard to see any amendments to the Constitution between 1868 and 1934, or from 1934 to today, that could change Attorney General Cummings concerns. By Spitzer’s reasoning statutes such as California’s red flag law overturned in *Stromberg v. California* (1931)¹³ would still be valid, and Highland Park could ban symbols of Communism.

11. Spitzer at ¶26 observes that the “the original version of the bill [the National Firearms Act] proposed regulating both semi-automatic and fully automatic firearms.” What Congress *passed* limited regulation to automatic weapons and short-barreled rifles and shotguns, suppressors, and a few other exotic weapons. (An NRA letter writing campaign to prevent regulation of semiautomatic weapons seems to have been the reason.) Automatic weapons are not within the ambit of the Highland Park ordinance.

12. Much of the rest of Spitzer’s declaration regarding state laws is irrelevant because of the 1868 limiter set by Bruen, but I examine his citations to demonstrate that he is not an expert. In n. 42, he acknowledges that he has relied on Duke Law Center for Firearms Law, “Repository of Historical Gun Laws.” This would be a fine *starting* point for research; looking up the cited statutes would show him how much of the data in that repository is either false or taken out of context.¹⁴

¹³ *Stromberg v. California*, 283 U.S. 359 (1931).

¹⁴ Example: 1821 Me. Laws 285, ch. 76, § 1 appears in Duke Center for Firearms Law at <https://firearmslaw.duke.edu/laws/1821-me-laws-285-ch-76-%C2%A7-1/>, last accessed January 28, 2023. Compare the text to <https://archive.org/details/actsresolvespass179495mass/page/436/mode/2up> which shows the actual pages. Page 436 begins in the middle of Chap. 68, “An Act to Enable Sheriffs, Deputy Sheriffs, & Constables, to Require Aid in the Execution of Their Respective Offices in Criminal Cases,” and starts Chap. 69: “An Act for Recording Births and Deaths by the Clerks of Towns & Districts.” There is no § 1 anywhere on that page.

13. Spitzer at ¶27 points to state regulation of semiautomatic firearms and cites a Florida ban on *hunting* with automatic guns. Hunting often involves regulations much more restrictive than private ownership and use. More importantly, the citation clearly distinguishes automatic guns from semiautomatic guns.

14. Spitzer at ¶26 claims that ten states plus D.C. restricted semi-automatic weapons. But buried in n. 34, he acknowledges “The language of the restrictions in Illinois, Maine, and South Carolina was ambiguous regarding whether they applied to semi-automatic weapons.” This ambiguity might reflect that advertising of the 1920s still used “automatic” to refer to semi-automatic guns.¹⁵ “Automatic” was sometimes a careless way to convey the more precise word “autoloader.”¹⁶ Even today, some older shooters will slip into the older terminology to describe semi-automatic handguns (*e.g.*, “Colt automatic”).

15. Spitzer at ¶28 points to state regulation of semiautomatic firearms as an argument for the constitutionality of Highland Park’s ordinance. He also claims, “By that time [the 1920s], gun technology was now available that made it possible for ammunition to be reliably fired in rapid succession and guns to be reloaded through interchangeable ammunition magazines or similar devices.” But at *least* as early as 1919, Colt was advertising the “COLT AUTOMATIC PISTOL” with evidence of its success in the ”Civilian Individual Pistol Match... Open to any civilian, any arm caliber .38 or larger permitted... Won by A.P. Lane with a .45 Colt Automatic Pistol.”¹⁷ A 1919 catalog from HARDWARE WORLD: PLUMBING & HEATING advertised: “Colt ‘The World’s

¹⁵ *Browning Automatic Shotguns* (ad), OUTDOOR AMERICA 83 (Aug. 1927).

¹⁶ *Our Twenty-Two Automatics*, HUNTER-TRADER-TRAPPER 50 (Apr. 1919).

¹⁷ *Victory Colt* (ad), ARMS AND THE MAN 140 (Nov. 1, 1919).

Right Arm'... Colt Automatic Pistols and Colt Revolvers are being supplied to the trade as fast as possible."¹⁸

16. Spitzer at ¶30 lists states that adopted magazine capacity limits. 1933 Cal. Stat. 1169... ch. 465, §§ 1, 8." The actual statute has no such limits. It is a machine gun licensing law.

STATUTES OF CALIFORNIA

PASSED AT THE
FIFTIETH SESSION OF THE LEGISLATURE

¹⁸ *Colt: "The World's Right Arm"* (ad), 14 Hardware World: Plumbing & Heating 19 (1919).

CHAPTER 450.

An act to amend sections 1, 2, 3, 6, and 7 of an act entitled Stats. 1927, "An act regulating the sale, offering for sale, possession or p. 935, transportation of machine rifles, machine guns and sub- amended machine guns, and providing a penalty for the violation thereof," approved May 16, 1927.

[Approved by the Governor May 20, 1933. In effect August 21, 1933.]

The people of the State of California do enact as follows:

SECTION 1. Section 3 of the act cited in the title hereof is Stats. 1931, p. 2203 hereby amended to read as follows:

Sec. 3. It shall be lawful for the Superintendent of the Permits re Division of Criminal Identification and Investigation of the machine Department of Penology to issue permits for the possession guns and transportation or possession or transportation of such machine guns, upon a showing satisfactory to him that good cause exists for the issuance thereof to the applicant for such permit; provided, that no permit shall be issued to a person who is under twenty-one years of age.

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STATUTES OF CALIFORNIA

[Ch. 450

Stats. 1931
p. 2203.

SEC. 2. Section 1 of said act is hereby amended to read as follows:

Section 1. On and after the date upon which this act takes effect every person, firm or corporation, who within the State of California sells, offers for sale, possesses or knowingly transports any firearms of the kind commonly known as a machine gun, except as herein prescribed, is guilty of a public offense and upon conviction thereof shall be punished by imprisonment in the State Prison not to exceed five years or by a fine not to exceed five thousand dollars or by both such fine and imprisonment.

Exceptions. Provided, however, that nothing in this act contained shall prohibit the sale to, purchase by, or possession of such firearms by police departments and members thereof, sheriffs, and city marshals, or the military or naval forces of this State or of the United States for use in the discharge of their official duties.

Stats. 1927.
p. 935.

SEC. 3. Section 2 of said act is hereby amended to read

Stats 1937.
p. 938.
Machine
gun defined.

SEC. 3. Section 2 of said act is hereby amended to read as follows:

Sec. 2. The term machine gun as used in this act shall be construed to apply to and include all firearms known as machine rifles, machine guns, or submachine guns capable of discharging automatically and continuously loaded ammunition of any caliber in which the ammunition is fed to such gun from or by means of clips, discs, drums, belts or other separable mechanical device and all firearms which are automatically fed after each discharge from or by means of clips, discs, drums, belts or other separable mechanical device having a capacity greater than ten cartridges.

Stats 1931.
p. 2203.
Revocation
of permits

SEC. 4. Section 6 of said act is hereby amended to read as follows:

Sec. 6. Permits issued in accordance with this act may be revoked by the issuing authority at any time when it shall appear that the need for such firearms has ceased or that the holder of the permit has used such firearms for purposes other than those allowed by the permit or that the holder of the permit has not exercised great care in retaining custody of any weapons possessed under the permit.

Stats 1931.
p. 2203.
Licenses
to sell

SEC. 5. Section 7 of said act is hereby amended to read as follows:

Sec. 7. The Superintendent of the Division of Criminal Identification and Investigation of the Department of Penology may also grant licenses in a form to be prescribed by him effective for not more than one year from the date of issuance, to permit the sale at the place specified in the license of such firearm subject to all of the following conditions, upon breach of any of which the license shall be revoked:

1. Such business shall be carried on only in the place designated in the license.
2. Such license or a certified copy thereof must be displayed on the premises in a place where it may easily be read.

Conditions

Ch. 451]

FIFTIETH SESSION

1171

3. No such firearm shall be delivered to any person not authorized to receive the same under the provisions of this act.

4. A complete record must be kept of sales made under the authority of the license, showing the name and address of the purchaser, the descriptions and serial numbers of the weapons purchased, the number and date of issue of the purchaser's permit, if any, and the signature of the purchaser or purchasing agent. This record shall be open to the inspection of any peace officer or other person designated by the Superintendent of the Bureau of Criminal Identification and Investigation.

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§ 2 requires a firearm to be *both* a machine gun as well as fed by a magazine exceeding ten rounds to fall within ch. 450, sec. 2. If this law banned magazine-fed semiautomatics, why California's need to pass the Assault Weapons Control Act (1989)?

¹⁹ 1933 Cal. Stat. 1169, ch. 465

17. “1927 Mass. Acts 413, 413-14;”

ACTS
AND
RESOLVES
PASSED BY THE
General Court of Massachusetts

IN THE YEAR

1927

TOGETHER WITH

RETURNS OF VOTES UPON CONSTITUTIONAL AMENDMENT
AND QUESTIONS SUBMITTED TO VOTERS, TABLES
SHOWING CHANGES IN THE STATUTES, ETC.

PUBLISHED BY THE
SECRETARY OF THE COMMONWEALTH



BOSTON
WRIGHT & POTTER PRINTING COMPANY
1927

ACTS, 1927. — CHAPS. 325, 326.

413

vent the state treasurer from deducting at any time, from any moneys which may be due from the commonwealth to the delinquent city or town, the whole or any part of said tax, with the interest accrued thereon, which shall remain unpaid.

Approved April 27, 1927.

Deduction of
tax from
money due
from com-
monwealth.

AN ACT RELATIVE TO THE CHOICE OF A THIRD MEMBER OF THE STATE BOARD OF RETIREMENT. *Chap. 325*

Whereas, The deferred operation of this act would in part defeat its purpose, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

Chapter ten of the General Laws is hereby amended by striking out section eighteen and inserting in place thereof the following: — *Section 18.* There shall be a state board of retirement serving in the department, consisting of three members, one of whom shall be the state treasurer, ex officio, who shall be chairman, a second member elected by the state retirement association established under section two of chapter thirty-two from among their number in such manner as the commissioner of insurance may determine, and a third member chosen by the other two. If the third member is not so chosen within thirty days after the election of the second, the governor shall appoint the third member for a term of three years. Upon the expiration of the term of office of an elected, chosen or appointed member or in case of a vacancy in either of said offices, his successor shall be elected, chosen or appointed as aforesaid for three years.

Approved April 27, 1927.

State board
of retirement,
members,
section.

Expirations
and vacancies.

AN ACT RELATIVE TO MACHINE GUNS AND OTHER FIREARMS. *Chap. 326*

Be it enacted, etc., as follows:

SECTION 1. Chapter one hundred and forty of the General Laws, as amended in section one hundred and twenty-one by section one of chapter four hundred and eighty-five of the acts of nineteen hundred and twenty-two, is hereby further amended by striking out said section one hundred and twenty-one and inserting in place thereof the following: — *Section 121.* In sections one hundred and twenty-two to one hundred and twenty-nine, inclusive, "firearms" includes a pistol, revolver or other weapon of any description, loaded or unloaded, from which a shot or bullet can be discharged and of which the length of barrel, not including any revolving, detachable or magazine breech, does not exceed twelve inches, and a machine gun, irrespective of the length of the barrel. Any gun of small arm calibre designed for rapid fire and operated by a mechanism, or any gun which operates automatically after the first shot has been fired, either by gas action or recoil action,

G. L. 190, § 18.
§ 121, etc.
amended.

Definition of
"firearms."

Definition of
"machine gun."

Words "purchase" and "sale" to include exchange. The word "purchaser" to include exchange and verbs "sell" and "purchase" to include verb exchange. Section 123 not applicable to certain firearms. G. L. 140, § 123, etc., amended.

Conditions of license to sell, rent or lease certain firearms.

shall be deemed to be a machine gun for the purposes of said sections, and of sections one hundred and thirty-one and one hundred and thirty-one B. As used in this section and in sections one hundred and twenty-two to one hundred and thirty-one A, the words "purchase" and "sale" shall include exchange, the word "purchaser" shall include exchanger, and the verbs "sell" and "purchase", in their different forms and tenses, shall include the verb exchange in its appropriate form and tense. Said sections one hundred and twenty-two to one hundred and twenty-nine, inclusive, shall not apply to antique firearms incapable of use as firearms nor to sales of firearms at wholesale.

SECTION 2. Said chapter one hundred and forty, as amended in section one hundred and twenty-three by section four of said chapter four hundred and eighty-five, by section one of chapter two hundred and eighty-four of the acts of nineteen hundred and twenty-five and by section one of chapter three hundred and ninety-five of the acts of nineteen hundred and twenty-six, is hereby further amended by striking out said section one hundred and twenty-three and inserting in place thereof the following: — *Section 123.* The license shall be expressed to be and shall be subject to the following conditions: First, That the provisions in regard to the nature of the license and the building in which the business may be carried on under it shall be strictly adhered to. Second, That every licensee shall before delivery of a firearm make or cause to be made a true entry in a sales record book to be furnished by the licensing authorities and to be kept for that purpose, specifying the description of the firearm, the make, number, whether single barrel, magazine, revolver, pin, rim or central fire, whether sold, rented or leased, the date and hour of such delivery, and shall, before delivery as aforesaid, require the purchaser, renter or lessor personally to write in said sales record book his full name, sex, residence and occupation. The said book shall be open at all times to the inspection of the licensing authorities and of the police. Third, That the license or a copy thereof, certified by the recording officer of the licensing authorities or by the clerk of the town by which it is issued, shall be displayed on the premises in a position where it can easily be read. Fourth, That no firearms shall be displayed in any outer window of said premises or in any other place where they can readily be seen from the outside. Fifth, That the licensee shall, once a week, send a copy of the record of sales, rentals and leases made by him for the preceding seven days to the licensing authorities and to the commissioner of public safety. Sixth, That every firearm shall be delivered securely wrapped and fastened and shall be unloaded when delivered. Seventh, That no delivery of a pistol or revolver shall be made on the day of application for the purchase, rental or lease thereof, except to a person having a license to carry the

Chap. 326 defines machine gun as "which operates automatically after the first shot is

fired." This is a machine gun. There is no specification of magazine capacity here.

18. At least a few of the citations are correct. "1927 Mich. Pub. Acts 887, 888" is an index:

PUBLIC ACTS

08

THE LEGISLATURE

OF THE

STATE OF MICHIGAN

PASSED AT THE

REGULAR SESSION OF 1927

MAINTAINING JOINT RESOLUTIONS AND AMENDMENTS
TO THE CONSTITUTION

2 2 = 16 M 624



653.14 1927

SEP 1 2 1967
COMPILED BY

JOHN S. HAGGERTY

SECRETARY OF STATE

LANSING, MICHIGAN.
ROBERT SMITH CO. STATE PRINTERS.

ROBERT SMITH CO., STATE PRINTERS

INDEX

The statute that Spitzer miscited is 1927 Mich. 669:

CHAPTER XXXVII

FIREARMS

Sec. 222. **Definitions**—The word "pistol" as used in this chapter shall mean any firearm, loaded or unloaded, thirty inches or less in length. The word "purchaser" shall mean any person who receives a pistol from another by purchase, gift or loan. The word "seller" shall mean any person who sells, furnishes, loans or gives a pistol to another.

Sec. 223. **Selling pistols**—Any person who shall be the seller of any pistol, as those terms are defined in this chapter, without complying with the requirements of section two of act number three hundred seventy-two of the public acts of nineteen hundred twenty-seven, being section sixteen thousand seven hundred fifty of the compiled laws of nineteen hundred twenty-nine, shall be guilty of a misdemeanor.

Sec. 224. **Selling, etc., machine guns, silencers, blackjack, etc.**—Any person who shall manufacture, sell, offer for sale or possess any machine gun or firearm which can be fired more than sixteen times without reloading or any muffler, silencer or device for deadening or muffling the sound of a discharged firearm, or any bomb, or bomb shell, blackjack, slung shot, billy, metallic knuckles, sand club, sand bag, or bludgeon or any gas ejecting device, weapon, cartridge, container or contrivance designed or equipped for or capable of ejecting any gas which will either temporarily or permanently disable, incapacitate, injure or harm any person with whom it comes in contact, shall be guilty of a felony, punishable by imprisonment in the state prison not more than five years or by a fine of not more than two thousand five hundred dollars.

The provisions of this section shall not apply, however, to any person manufacturing firearms, explosives or munitions of war by virtue of any contracts with any department of the government of the United States, or with any foreign government, state, municipality or any subdivision thereof, or to any person duly licensed to manufacture, sell or possess any gas ejecting device, weapon, cartridge, container or contrivance above mentioned.

Sec. 225. **Possession, etc., of printed matter offering to sell or deliver pistols, etc., from without the state**—Any person who shall sell or deliver within this state, or offer or expose for sale, or have in possession for the purpose of sale, any book, pamphlet, circular, magazine, newspaper or other form of written or printed matter offering to sell or deliver, or containing an offer to sell or deliver to any person within this state from any place without this state any pistol or any weapon or device mentioned in the next preceding section of this chapter, shall be guilty of a misdemeanor. The provisions of this section shall not apply to sales of or offers to sell pistols at wholesale to persons regularly engaged in the business of selling such pistols wholesale or retail, nor to sales or offers to sell such pistols made or authorized by the United States government or any department or agency thereof.

Sec. 226. **Carrying firearms or dangerous weapon with unlawful intent**—Any person who, with intent to use the same unlawfully against the person of another, goes armed with a pistol or other firearm or dagger, dirk, razor, stiletto, or knife having a blade over three inches in length, or any other dangerous or deadly weapon or instrument, shall be guilty of a felony, punishable by imprisonment in the state prison for not more than five years or by a fine of not more than two thousand five hundred dollars.

Sec. 227. **Carrying concealed weapons**—Any person who shall carry a dagger, dirk, stiletto or other dangerous weapon except it is carried as such, concealed on or about his person [C] [?] # 686 / or otherwise in any vehicle operated or occupied by him [C] [?] # 686 /

It prohibits sale or possession of "any machine gun or firearm which can be fired more than sixteen times without reloading..." Mich. Pub. Acts 1929, Act No. 206" revises the 1927 statute but retains the 16-round limit.²⁰

19. "1933 Minn. Laws 231, 232":

²⁰ Mich. Pub. Acts 1929, Act No. 206.

SESSION LAWS
OF THE
STATE of MINNESOTA
PASSED DURING THE
FORTY EIGHTH SESSION
OF THE
STATE LEGISLATURE
AT THE SESSION COMMENCING
JANUARY 3, 1933

PUBLISHED BY
MIKE HOLM
SECRETARY OF STATE

188] OF MINNESOTA FOR 1933 231

corrected thereby, and shall be certified by the proper officers of the municipality as to authorization and by an engineer or surveyor as to correctness, and the signatures of such persons shall be acknowledged in like manner as a deed.

Such plat or plats when so certified and acknowledged may be filed in the office of the register of deeds and the declaration thereon may be recorded at length in a "Book of Plat Certificates"; and when so filed and recorded such plat or plats and declaration together with the record thereof shall be *prima facie* evidence in all matters shown or stated therein as to the lands covered thereby.

This act shall not apply to a city whose charter provides for official supervision of plats by municipal officers, commission or board.

✓ Approved April 10, 1933.

CHAPTER 189—H. F. No. 166

An act to amend Mason's Minnesota Statutes of 1927, Section 7456, relating to renewal of corporate existence.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Publication of notices of renewal of corporate existence.**—That Mason's Minnesota Statutes of 1927, Section 7456, be amended so as to read as follows:

"7456. No such resolution shall take effect until a duly certified copy thereof shall have been filed, recorded, and published in the same manner as its original certificate. *Provided, that in the case of a co-operative association, it shall not be necessary to publish said resolution.*"

Approved April 10, 1933.

CHAPTER 190—H. F. No. 189

An act making it unlawful to use, own, possess, sell, control or transport a "machine gun", as hereinafter defined, and providing a penalty for the violation thereof.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Definitions.**—(a) Any firearm capable of loading or firing automatically, the magazine of which is capable of holding more than twelve cartridges, shall be a machine gun within the provisions of this Act.

(b) Any firearm capable of automatically reloading after each shot is fired, whether firing singly by separate trigger pressure or firing continuously by continuous trigger pressure; which said firearm shall have been changed, altered or modified to increase the magazine capacity from the original design as manufactured by the manufacturers thereof, or by the addition thereto of extra and/or longer grips or stocks to accommodate such extra capacity, or by the addition, modification and/or attachment thereto of any other device capable of increasing the magazine capacity thereof, shall be a machine gun within the provisions of this Act.

(c) A twenty-two caliber light sporting rifle, capable of firing continuously by continuous trigger pressure, shall be a machine gun within the provisions of this Act. A twenty-two caliber light rifle, capable of automatically reloading, but firing separately by separate trigger pressure for each shot, shall not be a machine gun within the provisions of this Act and shall not be prohibited hereunder, whether having a magazine capacity of twelve cartridges or more. But if the same shall have been changed, altered, or modified, as prohibited in section one (b) hereof, then the same shall be a machine gun within the provisions of this Act.

Sec. 2. **Application.**—This Act shall not apply to sheriffs, coroners, commissioners of police or other peace officers, or to any warden, superintendent or head keeper of any prison, penitentiary, county jail or other institution for retention of any person convicted of, or accused of, crime, while engaged in the discharge of official duties, or to any public official engaged in the enforcement of law; nor to any person or association possessing a machine gun not useable as a weapon and possessed as a curiosity, ornament or keepsake; when such officers and persons and associations so excepted shall make and file with the Bureau of Criminal Apprehension of this state within 30 days after the passage of this Act, a written report showing the name and address of such person or association and the official title and position of such officers and showing a particular description of such machine gun now owned or possessed by them or shall make such report as to hereinafter acquired machine guns within 10 days of the acquisition thereof; nor to any person legally summoned to assist in making arrests or preserving peace, while said person so summoned is engaged in assisting such officer; nor shall this Act apply to the armed forces of the United States or of the State of Minnesota.

Sec. 3. **Machine guns prohibited.**—Any person who shall own, control, use, possess, sell or transport a machine gun, as herein defined, in violation of this Act, shall be guilty of a felony.

Approved April 10, 1933.

CHAPTER 191—S. F. No. 336

An act to amend Mason's Minnesota Statutes of 1927, Section 646 relating to claims against counties.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Claims against county—appeal.**—That Mason's Minnesota Statutes of 1927, Section 646, be amended to read as follows:

"646. When any claim against a county is disallowed by the board in whole or in part, a claimant may appeal from its decisions to the district court by causing a written notice of such appeal to be filed in the office of the auditor within fifteen days after *written notice mailed to said claimant by the county auditor showing the disallowance of said claim* and giving security for costs, to be approved by the auditor, who shall forthwith notify the county attorney thereof. When any claim against a county shall be allowed in whole or in part by such board, no order shall be issued in payment of the same, or any part thereof until after fifteen days from date of the decision; and the county attorney may, on behalf and in the name of such county, appeal from such decision to the district court, by causing a written notice of such appeal to be filed in the office of the auditor within fifteen days after date of the decision appealed from; or any seven taxpayers of the county may in their own names appeal from such decision, to the district court by causing a written notice of appeal stating the grounds thereof to be filed in the office of the auditor within fifteen days after the date of the decision appealed from, and giving to the claimant security for his costs and disbursements to be approved by a judge of the district court; and thereafter no order shall be issued in payment of any such claim until a certified copy of the judgment of the court shall be filed in the office of the auditor. Upon the filing of such notice of appeal, the court shall acquire jurisdiction of the parties and of the subject matter, and may compel a return to be made as in the case of an appeal from a judgment of a justice of the peace.

Approved April 10, 1933.

This law defines machine guns to include “any firearm capable of loading or firing automatically, the magazine of which is capable of holding more than twelve cartridges.” The phrase “capable of loading” seems to mean semiautomatic firearms. However, this only includes semiautomatic firearms if “said firearm shall have been changed, altered or modified to increase the magazine capacity from the original design as manufactured by the manufacturers thereof, or by the addition of any other device capable of increasing the magazine capacity thereof...”²¹ Any gun that came with a factory LCM would be outside this definition of machine gun. It seems arguable that a larger magazine that could be used with a firearm without modification of that arm would qualify. It is *not* a magazine size limit.

20. “1933 Ohio Laws 189”:

²¹ Minn. Sess. Laws (1933), ch. 190 at 231-3.

THE STATE OF OHIO
LEGISLATIVE ACTS

PASSED
(EXCEPTING APPROPRIATION ACTS)
AND
JOINT RESOLUTIONS

ADOPTED
BY THE
NINETIETH GENERAL ASSEMBLY OF OHIO

At Its Regular Session

BEGUN AND HELD IN THE CITY OF COLUMBUS, OHIO,
JANUARY 2, 1933 to JULY 10, 1933,
(both inclusive)

Also the Times for Holding the Courts of Appeals,
and Courts of Common Pleas in Ohio,
A. D. 1933.

VOLUME CXV

189
Columbus, Ohio
THE F. J. HERR PRINTING CO.
1933
Bound at State Bindery

Passed March 30, 1933. #193 (p. 189)

Approved April 6, 1933.

GEORGE WHITE,
Governor.

The sectional number herein is in conformity to the General Code.
JOHN W. BRICKER,
Attorney General.

Filed in the office of the Secretary of State at Columbus, Ohio, on
the 10th day of April, A. D. 1933.

GEORGE S. MYERS,
Secretary of State.

File No. 63.

(House Bill No. 166)

AN ACT

To supplement section 12819 of the General Code by the enactment of
supplemental sections 12819-3, 12819-4, 12819-5, 12819-6 and
12819-7, relative to the sale and possession of machine guns.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 12819 of the General Code be supplemented by the enactment of sections 12819-3, 12819-4, 12819-5, 12819-6 and 12819-7, to read as follows:

Definitions.

Sec. 12819-3. For the purpose of this act, a machine gun, a light machine gun or a sub-machine gun shall be defined as any firearm which shoots automatically, or any firearm which shoots more than eighteen shots semi-automatically without reloading. Automatically as above used means that class of firearms which, while the trigger on the firearm is held back continues to fire successive shots. Semi-automatically means that class of firearm which discharges one shot only each time the trigger is pulled, no manual reloading operation being necessary between shots.

Machine gun permit; application; bond of applicant; exceptions.

Sec. 12819-4. No person shall own, possess, transport, have custody of or use a machine gun, light machine gun or sub-machine gun, unless he first procures a permit therefor from and at the discretion of the

Machine gun includes "any firearm which shoots more than eighteen shots semi-automatically." It includes a definition of semi-automatically that conforms to the current definition.

21. "1927 R.I. Pub. Laws 256":

ACTS AND RESOLVES

PASSED BY THE

GENERAL ASSEMBLY

OF THE

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS

AT THE

JANUARY SESSION, A. D. 1927

STATE OF RHODE ISLAND, ETC.
OFFICE OF THE SECRETARY OF STATE, 1927

PAWTUCKET, R. I.
THE AUTO PRESS, PRINTERS
1927

256 JANUARY SESSION, 1927—CHAPTER 1052.

CHAPTER 1052.

H 729 A
Approved
April 22, 1927.

AN ACT TO REGULATE THE POSSESSION OF FIREARMS.

It is enacted by the General Assembly as follows:

Certain words
and phrases,
now construed:

"Pistol."

SECTION 1. When used in this act **the** following words and phrases shall be construed as follows:

"Pistol" shall include any pistol or revolver, and any shot gun, rifle or similar weapon with overall length less than twenty-six inches, but shall not include any pistol without a magazine or any pistol or revolver designed for **the** use of blank cartridges only.

"Machine
gun."

"Machine gun" shall include any weapon which shoots automatically and any weapon which shoots more than twelve shots semi-automatically without reloading.

"Firearm."

"Firearm" shall include any machine gun or pistol.

"Person."

"Person" shall include firm, association or corporation.

"Licensing
authorities."

"Licensing authorities" shall mean **the** board of police commissioners of a city or town where such board has been instituted, **the** chief of police or superintendent of police of other cities and towns having a regular organized police force, and in towns where there is no chief of police or superintendent of police it shall mean **the** town clerk who may issue licenses upon **the** recommendation of **the** town sergeant;

"Crime of
violence."

"Crime of violence" shall mean and include any of the following crimes or an attempt to commit any of the same, viz.: murder, manslaughter, rape, mayhem, assault or battery involving grave bodily injury, robbery, burglary, and breaking and entering.

"Sell."

"Sell" shall include let or hire, give, lend and transfer,

"Purchase."

and **the** word "purchase" shall include hire, accept and borrow, and **the** expression "purchasing" shall be construed accordingly."

Machine gun includes semi-automatic guns which shoot more than twelve shots without reloading.

22. I was unable to verify “1933 S.D. Sess. Laws 245.” I do notice that, assuming the version on p. 28 of Spitzer’s declaration is accurate, that the law *seems* to include semiautomatic firearms but the definition is defective.

§ 1. “machine gun” applies to and includes a weapon of any description by whatever name known, loaded or unloaded from which more than five shots or bullets may be rapidly or automatically, or semi-automatically discharged from a magazine, by a single function of the firing device.

Any firearm that fires even two shots by a single trigger pull is an automatic weapon, not a semiautomatic weapon.

23. The same problem applies here. Assuming the version on Spitzer, p. 30 is accurate it seems to include semiautomatic firearms but the definition is defective.

§ 1. Where used in this act; (a) “Machine gun” applies to and includes a weapon of any description by whatever name known, loaded or unloaded, from which more than seven shots or bullets may be rapidly, or automatically, or semi-automatically discharged from a magazine, by a single function of the firing device, and also applies to and includes weapons, loaded or unloaded, from which more than sixteen shots or bullets may be rapidly, automatically, semi-automatically or otherwise discharged without reloading.

Any firearm that fires even two shots by a single trigger pull is an automatic weapon, not a semiautomatic weapon. This is a seven-round limit. More interesting is that like the nearly identical South Dakota statue § 3 only prohibits machine gun possession “for offensive or aggressive purpose” and § 4 defines *that* so narrowly that a citizen possessing a machine gun in one’s home or business was not unlawful. This is not really a magazine limit except for a rare set of conditions.

24. “47 Stat. 650, 650, 652 (District of Columbia)” points to a magazine limit (12) and applies it to both automatic and semiautomatic weapons. Interestingly, Congress passed it as part of a comprehensive gun law July 8, 1932.²²

²² 47 Stat. 650, 652

The Bonus Expeditionary Force was at that time encamped in the District of Columbia requesting early Congressional payment of a bonus to veterans. (The Depression was a desperate time for many Americans.) Congress passed this gun law 20 days before the government first sent police to clear out the encampment, then called out the Army to restore order. Several protesters died.

As the Washington Daily News observed: "If the Army must be called out to make war on unarmed citizens, this is no longer America."²³ Madison's warning in *Federalist 46*²⁴ about the importance of an armed citizenry as a bulwark against an oppressive national government seems quite apropos.

25. Many of the statutes Spitzer cites at n. 40 are hunting statutes, which have always been restrictive to protect wild game, and are not general prohibitions on magazine capacity:

Two of these states enacted early laws focused on such weapons' use in hunting. New Jersey had a 1920 law making it "unlawful to use in hunting fowl or animals of any kind any shotgun or rifle holding more than two cartridges at one time, or that may be fired more than twice without reloading." 1920 N.J. Laws 67, ch. 31, Section 9. North Carolina made it "unlawful to kill quail with any gun or guns that shoot over two times before reloading" in 1917. 1917 N.C. Sess. Laws 309, ch. 209, Sec. 1.

Magazine capacity limits while hunting do not apply at home or on a shooting range.

26. Spitzer at ¶30 claims "four states restricted all guns that could receive any type of ammo feeding mechanism or round feeding device and fire them continuously in a fully automatic

²³ *Bonus Expeditionary Forces March on Washington*, National Park Service, <https://www.nps.gov/articles/bonus-expeditionary-forces-march-on-washington.htm>, last accessed January 31, 2023.

²⁴ James Madison, FEDERALIST 46. Madison sought to alleviate the fears of those worried the new Constitution might give a president with inappropriate ambitions the power to enforce his will by military force. "Let a regular army, fully equal to the resources of the country, be formed; and let it be entirely at the devotion of the federal government; still it would not be going too far to say, that the State governments, with the people on their side, would be able to repel the danger. The highest number to which, according to the best computation, a standing army can be carried in any country, does not exceed one hundredth part of the whole number of souls; or one twenty-fifth part of the number able to bear arms. This proportion would not yield, in the United States, an army of more than twenty-five or thirty thousand men. To these would be opposed a militia amounting to near half a million of citizens with arms in their hands,..."

manner (California, Hawaii, Missouri, and Washington State).” True, but irrelevant to magazine size, and irrelevant to Highland Park’s ordinance.

27. Spitzer cites 1927 Cal. Stat. 938; it is another machine gun ban and *not* a magazine limit. “The term machine gun as used in this act shall be construed to apply to and include all firearms known as machine rifles, machine guns or submachine guns capable of discharging automatically *and* continuously loaded ammunition of any caliber in which the ammunition is fed to such a gun from or by means of clips, disks, drums, belts or other separable mechanical devices.”

[emphasis added]

STATUTES OF CALIFORNIA

PASSED AT THE
FORTY-SEVENTH SESSION OF THE LEGISLATURE

CHAPTER 552.

An act to prohibit the possession of machine rifles, machine guns and submachine guns capable of automatically and continuously discharging loaded ammunition of any caliber in which the ammunition is fed to such guns from or by means of clips, disks, drums, belts or other separable mechanical device, and providing a penalty for violation thereof.

[Approved by the Governor May 16, 1927. In effect July 29, 1927.]

The people of the State of California do enact as follows:

Possession
of machine
guns.

SECTION 1. On and after the date upon which this act takes effect every person, firm or corporation, who within the State of California possesses any firearm of the kind commonly known as a machine gun shall be guilty of a public offense and upon conviction thereof shall be punished by imprisonment in the state prison not to exceed three years or by a fine not to exceed five thousand dollars or by both such fine and imprisonment.

Provided, however, that nothing in this act shall prohibit police departments and members thereof, sheriffs, and city marshals or the military or naval forces of this state or of the United States from possessing such firearms for official use in the discharge of their duties.

SEC. 2. The term machine gun as used in this act shall be construed to apply to and include all firearms known as machine rifles, machine guns or submachine guns capable of discharging automatically and continuously loaded ammunition of any caliber in which the ammunition is fed to such gun from or by means of clips, disks, drums, belts or other separable mechanical device.

“Machine
gun”
defined

25

²⁵ 1927 Cal. Sess. Laws ch. 552 at 938.

28. Spitzer cites “1933 Haw. Sess. Laws 117” which defines pistol and revolver and in Section 15-A licenses ownership, possession, sale, offering for sale or transport of “any firearm of the kind commonly known as a ‘machine gun’ or any shell, cartridge, or bomb containing or capable of emitting tear gas or any noxious gas.”

LAW^S
OF THE
TERRITORY OF HAWAII
PASSED BY THE
SEVENTEENTH LEGISLATURE

REGULAR SESSION
1933

Commenced on Wednesday, the Fifteenth Day of February,—
and on the Sixtieth Day, the Twenty-sixth Day of April, the
Regular Session was extended by Executive Order
issued by the Governor of the Territory of Hawaii,
Honorable Lawrence M. Judd,—and Ended on
Thursday, the First Day of June.

PUBLISHED BY AUTHORITY

HONOLULU, HAWAII
HONOLULU STAR-BULLETIN, LTD.
1933

ACT 120

[S. B. No. 221]

AN ACT TO AMEND ACT 206 OF THE SESSION LAWS OF 1927, BY
AMENDING SECTION 1 THEREOF AND BY ADDING THERETO A
NEW SECTION TO BE KNOWN AS SECTION 15-A REGULATING
THE SALE, TRANSFER AND POSSESSION OF CERTAIN FIRE-
ARMS, TEAR GAS AND AMMUNITION.

Be it Enacted by the Legislature of the Territory of Hawaii:

SECTION 1. Act 206 of the Session Laws of 1927 is hereby
amended by amending the first paragraph of Section 1 thereof to
read as follows:

“Section 1. Definitions. ‘Pistol’ or ‘revolver’ as used in this
Act means and includes any firearm of any shape whatsoever with
barrel less than twelve inches in length and capable of discharging
loaded ammunition or any noxious gas.”

SECTION 2. Said Act 206 of the Session Laws of 1927 is hereby
further amended by adding a new section to be known as Section
15-A to read as follows:

“Section 15-A. Machine gun and tear gas. Except as permitted
under the provisions of this Act, no person, firm or corporation
shall own, possess, sell, offer for sale or transport any firearm of
the kind commonly known as a ‘machine gun’ or any shell, car-
tridge or bomb containing or capable of emitting tear gas or any
other noxious gas.

“Provided, however, that nothing in this Act contained shall
prohibit the sale to, purchase by, or possession of such firearms by
any city and county, county, territorial, or federal officer where
such firearms are required for professional use in the discharge of
his duties, nor to the transportation of such firearms for or on
behalf of police departments and members thereof, sheriffs, or the

TRANSFER OF FIREARMS, TEAR GAS, ETC. [ACT 120
HIGHWAYS AND IMPROVEMENT DISTRICT
118 ASSESSMENTS IN CITY AND COUNTY. [ACT 121

military or naval forces of this Territory or of the United States; and

“Provided, further, that nothing in this Act shall prohibit police departments and members thereof, sheriffs, or the military or naval forces of the Territory or of the United States from possessing or transporting such shells, cartridges, or bombs for professional use in the discharge of their duties.

“The term ‘shell, cartridge, or bomb’, as used in this Act shall be construed to apply to and include all shells, cartridges, or bombs capable of being discharged or exploded through or by the use of percussion caps, fuses, electricity, or otherwise, when such discharge or explosion will cause or permit the release or emission of tear gases. The term ‘machine gun’ as used in this Act shall be construed to apply to and include machine rifles, machine guns and submachine guns capable of automatically and continuously discharging loaded ammunition of any caliber in which the ammunition is fed to such guns from or by means of clips, disks, drums, belts or other separable mechanical device.”

SECTION 3. This Act shall take effect upon its approval.

Approved this 27th day of April, A. D. 1933.

LAWRENCE M. JUDD,
Governor of the Territory of Hawaii.

26

There are no magazine capacity limits.

29. “1929 Mo. Laws 170” uses nearly identical language to 1927 Cal. Stat. 938; there are no magazine limits, only a restriction on machine guns.

²⁶ 1933 Haw. Sess. Laws Act 120 at 117.

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[H. B. 498.]

CRIMES AND PUNISHMENT: Prohibiting the Sale Delivery, Transportation, Possession or Control of Machine Rifles, Machine Guns and Sub-machine Guns, and Providing Penalty for Violation of Law.

AN ACT to prohibit the sale, delivery, transportation, possession or control of machine rifles, machine guns and sub-machine guns capable of automatically and continuously discharging loaded ammunition of any caliber in which the ammunition is fed to such guns from or by means of clips, disks, drums, belts or other separable mechanical devices and providing a penalty for violation thereof.

SECTION

1. Unlawful to sell, deliver, transport or have in possession any machine gun.	2. The term "machine gun" defined.
--	------------------------------------

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. Unlawful to sell, deliver, transport or have in possession any machine gun.—It shall be unlawful for any person to sell, deliver, transport, or have in actual possession or control any machine gun, or assist in, or cause the same to be done. Any person who violates this act shall be guilty of a felony and punished by imprisonment in the state penitentiary not less than two (2) nor more than thirty (30) years, or by a fine not to exceed five thousand dollars, or by both such fine and imprisonment. Provided, that nothing in this act shall prohibit the sale, delivery, or transportation to police departments or members thereof, sheriffs, city marshals or the military or naval forces of this state or of the United States, or the possession and transportation of such machine guns, for official use by the above named officers and military and naval forces in the discharge of their duties.

Sec. 2. The term "machine gun" defined.—The term "machine gun" as used in this act shall be construed to apply to and include all firearms known as machine rifles, machine guns or sub-machine guns capable of discharging automatically and continuously loaded ammunition of any caliber in which the ammunition is fed to such gun from or by means of clips, disks, drums, belts or other separable mechanical device.

Approved June 1, 1929.

30. "Wash. 1933 Sess. Laws 335" is similar to 1927 Cal. Stat. 938 but with the additional limitation that it can be "fired therefrom at the rate of five or more shots per second." I certainly

cannot fire five shots per second from any semiautomatic rifle that I own. This would be 300 rounds per minute, which is automatic weapons speed.

SESSION LAWS

OF THE

STATE OF WASHINGTON

TWENTY-THIRD SESSION

Convened January 9, Adjourned March 9

1933

Compiled in Chapters
Under the Direction of ERNEST N. HUTCHINSON, Secretary of State,
and Including Five Acts Passed by the People Under the
Initiative Provision of the State Constitution
at the General Election, Held
on November 8, 1932.

Marginal Notes and Index

BY

G. W. HAMILTON
Attorney General

PUBLISHED BY AUTHORITY

CH. 64.]

SESSION LAWS, 1933.

335

CHAPTER 64.

[S. B. 223.]

MACHINE GUNS.

AN ACT relating to machine guns, regulating the manufacture, possession, sale of machine guns and parts, and providing penalty for the violation thereof, and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That it shall be unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or have in possession, or under control, any machine gun, or any part thereof capable of use or assembling or repairing any machine gun: *Provided, however,* That such limitation shall not apply to any peace officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the State of Washington.

SEC. 2. For the purpose of this act a machine gun is defined as any firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, mechanism, or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into such weapon, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second.

SEC. 3. Any person violating any of the provisions of this act shall be guilty of a felony.

SEC. 4. All machine guns, or parts thereof, illegally held or possessed are hereby declared to be contraband, and it shall be the duty of all peace officers, and/or any officer or member of the armed forces of the United States or the State of Wash-

Violation,
felony.

Declared
contraband.

336 SESSION LAWS, 1933. [CH. 65.
Seizure. ington, to seize said machine gun, or parts thereof, wherever and whenever found.
Effective im- SEC. 5. This act is necessary for the immediate
mediately. preservation of the public health and safety, and
shall take effect immediately.
Passed the Senate February 10, 1933.
Passed the House February 23, 1933.
Approved by the Governor March 6, 1933.

27

31. Spitzer lists 1934 Va. Acts ch. 137 which does indeed define a machine gun to include semi-automatic weapons that can fire more than sixteen shots, but according to Spitzer's p. 31, possession was not illegal unless "for offensive or aggressive purpose."²⁸ The presumption of such was narrowly drawn, like South Dakota's nearly identical law to allow U.S. citizens to possess such weapons at home in one's business.

III. The History of Pre-Twentieth Century Firearms Technologies

32. Spitzer's history of pre-Twentieth Century firearms technology is contradictory and tendentious, often ignoring his own sources' caveats. He makes much of the lack of commercial success of many early multishot guns, even while admitting that they were immediate predecessors of guns that *were* successes. At ¶40:

The Volcanic Repeating Arms Company was founded in 1855, and it experimented with a number of design innovations. But the company was "short-lived" and went "defunct" in 1866, even though its partners included Horace Smith, Daniel B. Wesson, and Courtlandt Palmer. *Its patent and technological work were important for subsequent developments, especially for Smith and Wesson's later work*, but the actual weapons produced by Volcanic were few, flawed, and experimental, dubbed "radical defects" by Winchester himself. [emphasis added]

At ¶41:

Another account laboring to establish early gun firing provenance asserts that "[s]emi-automatic technology was developed in the 1880s" with the "Mannlicher rifle. . . generally attributed to be the first semi-automatic rifle." Yet this "development" was initially a failure: "Ferdinand von Mannlicher's Model 1885 self-loading rifle design" was "a failure, never seeing anything even resembling mass production."

²⁷ 1933 Wash. Sess. Laws ch. 64 at 335.

²⁸

Yet his source for this claim tells us it was:

doomed to fail despite Mannlicher's formidable design talents, simply because the cartridge he based it on was the M1877 11mm Austrian black powder round used in the Werndl rifles. Self-loading weapons would not become truly practical in any form until the invention of smokeless powder, which drastically reduced the amount of fouling and residue from each shot.²⁹

33. Even having ignored this important explanation for Mannlicher's failure Spitzer claims:

“The true semi-automatic weapon did not become feasible and available until the beginning of the twentieth century, and the primary market was the military.” However, “the first semi-automatic pistol to prove reliable, effective, accurate, and commercially successful—sort of—was invented by Hugo Borchardt... that appeared on the market in 1893.”³⁰ The Belgian gun manufacturer FN licensed John Browning’s .32 caliber semiautomatic pistol design, specifically as a civilian self-defense weapon in 1897.³¹ A .38 caliber version was reviewed in 1900:

A certain number of these pistols are on sale in this country, but no final arrangements seem to have been made for handling them in a wholesale way. Probably those on the market have been specially imported from the States or the Continent. Possibly in a short period the Colt Company will be able to regularize the position, so that one may know where to obtain the pistol in a wholesale way from regularly appointed agents.³²

34. This version was marketed by Colt as “their ‘Sporting Model’ of 1900.” While sold in the commercial market, the U.S. Army and Navy ordered somewhere around 200 combined. Other civilian semiautomatic pistols, included the .38 caliber Pocket Model, the .32 caliber Pocket Model, introduced in 1903, and the .380 Pocket Model and .25 caliber in 1908.³³ (Pocket Model clearly shows Colt intended these for the civilian market.)

35. Spitzer’s discussion of semiautomatic firearms development misses the most important question: were repeating firearms available in the period before 1868, the year that Bruen makes

²⁹ Ian McCullum, *Mannlicher 1885 Semiauto Rifle*, ForgottenWeapons.com, May 6, 2015, <https://www.forgottenweapons.com/mannlicher-1885-semiauto-rifle/>, last accessed January 30, 2023.

³⁰ Nathan Gorenstein, THE GUNS OF JOHN MOSES BROWNING: THE REMARKABLE STORY OF THE INVENTOR WHOSE FIREARMS CHANGED THE WORLD 119 (2022).

³¹ *Id.*, at 104.

³² *The Colt Automatic Pistol*, ARMS AND EXPLOSIVES 144 (Sep. 1900).

³³ James E. Severn, COLT FIREARMS: 1836-1954 267, 269 (1954).

clear is one of the limiting dates on interpreting the Second Amendment as incorporated against the states? As even Spitzer admits at ¶45, Winchester's repeating rifle was "patented in 1860." He attempts to back himself out of this logical contradiction by asserting that the Winchester 1873 "was designed for sale to the Government as a military arm." While this well might be true for the Model 1873, advertising for the Winchester Repeating Rifle appears throughout the U.S. between 1865 and 1868: "Winchester Repeating Rifles Firing Two Shots a Second As a Repeater,"³⁴ "Sole Agents for the Whole West for the Celebrated Winchester's Patent Repeating Rifles and Carbines, Firing two shots a second, as a Repeater,... They can be fired Eighteen times in Succession, Without re-loading," offered for sale at \$50 for the 18-shot rifle and \$40 for the 13-shot carbine;³⁵ "Winchester Repeating Rifles, Firing Two Shots a Second as a Repeate [sic];"³⁶ "Winchester Repeating Rifles,"³⁷ Some of these advertisements are by gun retailers, some appear to be placed by Winchester seeking dealers.

36. Also at ¶45, Spitzer distinguishes the multishot firearms of the pre-1868 period from modern firearms by, "the Winchester was not a semi-automatic firearm; it was a lever-action rifle that required the shooter to manipulate a lever in a forward-and-back motion before each shot. And when the gun was emptied, it had to be manually reloaded, one round at a time." This is a distinction without a difference. That lever action is among the easiest and simplest mechanisms imaginable; yes, more work than just pulling the trigger again, but I doubt any mass murderer would refuse to use one, or even find that it slowed him down much. (The Navy Yard mass

³⁴ *Winchester's Repeating Rifles* (ad), BATON ROUGE [LA.] TRI-WEEKLY GAZETTE & COMET, Mar. 10, 1868, 4, May 19, 1868, 4 and May 21, 1868, 4.

³⁵ *Freund & Bro.* (ad), CHEYENNE [DAKOTA TERRITORY] LEADER, May 16, 1868, 2, Jun. 4, 1868, 3, Aug. 5, 1868, 3, Apr. 23, 1868, 2, Apr. 6, 1868, 2.

³⁶ *Winchester Repeating Rifles* (ad), [Jackson, Miss.] DAILY CLARION, Jul. 4, 1868, 1, Jul. 1, 1868, 2.

³⁷ *Winchester Repeating Rifles* (ad), WILMINGTON [N.C.] JOURNAL, Nov. 13, 1868, 1.

murderer used a pump-action Remington 870 shotgun to murder 12.³⁸ A pump-action shotgun is no slower than a lever action rifle to fire and reload.) Two shots per second is 120 shots per minute, well above the rate most shooters can expect to accurately fire an AR-15. Even the supposed disadvantage of not being magazine-fed is less a limitation than it first appears; there are lever action speed loaders.³⁹

37. Arguing that multishot firearms had gone from impractical to commercially unsuccessful, this distinction makes little sense. In 1868, Congress would have known that high-capacity rifles existed and could fire at least two rounds per second, not dramatically slower than modern semiautomatic firearms. If they thought this was a reason to rein in the guarantees to be incorporated through the Fourteenth Amendment, they had full capacity to make this distinction.

38. At ¶44: Spitzer claims “The government, in fact, dismissed such firearms as mere ‘novelties.’” His citation is to Pamela Haag’s THE GUNNING OF AMERICA (2016), a book so full of factual errors, out of context quotes, citations to non-existent pages in published books, and tendentious reasoning that I wrote an entire book documenting its mistakes.⁴⁰ Reliance on such sources may explain *some* of Spitzer’s many factual errors. “Colt’s early failure to cultivate either a military or a civilian market in the U.S. drove him to bankruptcy and then to market his guns to European governments in the 1840s. The gun made appearances in the pre-Civil War West, yet even during the Civil War, ‘Colt’s revolver was a sideshow through most of the war...’” Why, then, is there a Model 1860 U.S. Army revolver in the Metropolitan Museum of Art’s Notable Acquisitions catalog?⁴¹ What explains several pages in a 1922 ANTIQUES magazine of Colt

³⁸ Greg Botelho and Joe Sterling, *FBI: Navy Yard shooter ‘delusional,’ said ‘low frequency attacks’ drove him to kill*, CNN, <https://www.cnn.com/2013/09/25/us/washington-navy-yard-investigation/index.html>, last accessed February 3, 2023.

³⁹ Lever action rifle speed loader DiY, <https://youtu.be/F6gGA13AwME>, last accessed February 2, 2023.

⁴⁰ Clayton E. Cramer, LOCK, STOCK, AND BARREL: THE ORIGINS OF AMERICAN GUN CULTURE (2018).

⁴¹ Metropolitan Museum of Art, NOTABLE ACQUISITIONS: 1983-1984 25 (1984).

revolvers, as well as copies of the Colt, purchased by the Army and Navy during the Civil War?⁴² “Shortly into the Civil War, the Ordnance Department gave Colt their first order for the 1860 army models, later they received contracts for the same revolvers and eventually delivered over one hundred thousand before losing the contract.”⁴³ Pictures of the Colt Model 1851 Navy Revolver, Model 1861 Revolver, 1860 Army Revolver can be found in works describing Civil War equipment.⁴⁴

39. At ¶55, Spitzer tells us:

An article in Outdoor Life belied the claim that assault weapons are limited only to firearms that fire fully automatically. That article urged its readers to share its information with non-shooting friends to dispel “myths” about “assault weapons.” In its account, it correctly noted that “the term ‘assault weapon’ . . . generally referred to a type of light infantry firearm initially developed in World War II; a magazine-fed rifle and carbine suitable for combat, such as the AK-47 and the M16/M4. These are selective-fire weapons that can shoot semi-auto, fullauto, or in three-round bursts.

It is unclear what point Spitzer is trying to make. OUTDOOR LIFE is asserting that assault weapons can fire “fullauto, or in three-round bursts.” These would make such weapons machine guns under the National Firearms Act of 1968. Highland Park’s ordinance is therefore irrelevant. Perhaps Spitzer does not understand the current laws regulating weapons that can fire “fullauto, or in three-round bursts”?

40. Spitzer at ¶57 asserts that describing magazines that hold more than ten rounds as LCMs is a generally accepted definition. In ¶58-¶59, he points to previous laws, federal and state, that have used this definition. While this is technically true, it is tautological; gun prohibitionists started using this definition in 1989; therefore it is *true*. It is equally valid to observe that the pro-gun side has eschewed the term “assault weapon” for several years in favor of the less emotionally charged and technically more accurate “modern sporting rifle.” If all that we need is frequent use

⁴² *Our Martial Pistols*, ANTIQUES 220-3 (Nov. 1922).

⁴³ Donald L. Ware, REMINGTON ARMY AND NAVY REVOLVERS: 1861-1888 xvii (2007).

⁴⁴ Eric Fein, WEAPONS, GEAR, AND UNIFORMS OF THE CIVIL WAR 18-19 (2012).

of the term to make it generally accepted then “modern sporting rifle” (MSR) is just as valid as using the term LCM. Because firearm magazines larger than ten rounds have been standard equipment in commercially sold pistols, such as the Browning Hi-Power, since at least 1954⁴⁵, it is hard to call a standard capacity magazine large, except in some relative sense. Compared to a three-round magazine, a five round magazine could be characterized as an LCM.

IV. Historical Hardware Restrictions On Knives, Blunt Weapons, Pistols, and Trap Guns in the Eighteenth and Nineteenth Centuries

41. At ¶60, Spitzer attempts to draw parallels between various colonial and Early Republic laws and the Highland Park ordinance. “For example, from 1780-1809, at least four states (Connecticut, Ohio, New Jersey, Maryland) enacted measures that increased the penalties for burglaries or other crimes if the perpetrators were armed.” The Highland Park ordinance does not require any criminal act as a predicate for criminalization of possession or sale. If Highland Park wished to increase penalties for crimes committed while armed with an Modern Sporting Rifle or a magazine exceeding one round, this would be a fair analogy and would be unobjectionable.

42. “At least three states (New York, Ohio, Maryland) enacted laws to punish the discharge of firearms near populated areas.” I would be surprised if existing Illinois statute does not already deal with this safety issue with firearms of any type.

43. “At least four states (Virginia, Massachusetts, North Carolina, Tennessee) criminalized public arms carrying.” Such laws are irrelevant to the Highland Park ordinance which has no provisions concerning arms carrying. Examining the citation shows a host of errors. “1786 Va. Laws 33, ch. 21, An Act forbidding and punishing Affrays.” According to Blackstone, affray is

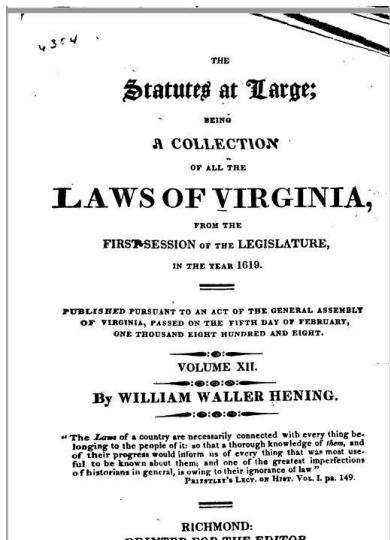
⁴⁵ *All the World Admires Browning*, (ad), LIFE, 4 (Sep. 27, 1954).

the “the fighting of two or more persons in some public place, to the terror of his majesty's subjects.”⁴⁶ Arms do not seem to be required to commit affray; fighting, brawling, or quarreling is required. Worse, while I could not find the 1786 Virginia session laws, I was able to find ch.

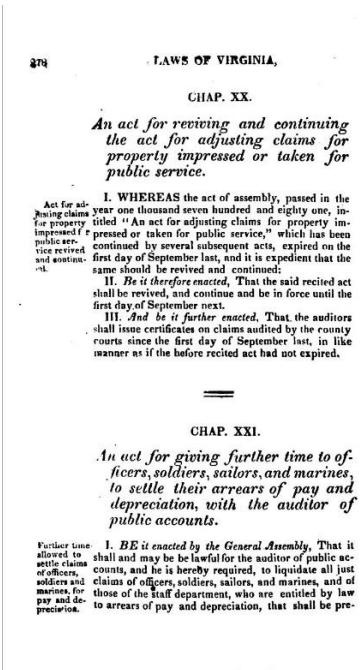
21 in Hening's STATUTES AT LARGE:

CHAP. 21

An act for giving further time to officers, soldiers, sailors, and marines, to settle their arrears of pay and depreciation, with the auditor of public accounts.



⁴⁶ 5 BLACKSTONE'S COMMENTARIES 144 (1803).



47

It appears that Spitzer meant 1786 Va. 334, at ch. 49, which is the Statute of Northampton (1328). The Bruen decision, rejected the relevance of the Statute of Northampton as being a limitation on the wearing of armor, not arms.⁴⁸

44. The California Attorney General made this same incorrect citation to “1786 Va. Laws 33, ch. 21,” as evidence of widespread bans on carrying of arms in Baird v. Becerra (2021).⁴⁹

45. Spitzer cites “1786 Mass. Sess. Laws An Act to Prevent Routs, Riots, and Tumultuous assemblies, and the Evil Consequences Thereof.” This statute prohibits “if any persons to the number of twelve, or more, being armed with clubs, or other weapons; or if any number of persons, consisting of thirty or more, shall be unlawfully, routously, riotously, or tumultuously assembled.”

⁴⁷ William Hening, 12 STATUTES AT LARGE ch. 21 at 278 (1823).

⁴⁸ New York State Rifle & Pistol Assn, Inc. v. Bruen, 142 S.Ct. 2111, 2140 (2022).

⁴⁹ Defendant’s Opposition To Plaintiffs’ Motion For Preliminary Injunction, Baird v. Becerra 10 (2021).

THE
L A W S
OF THE
Commonwealth of Massachusetts,

FROM

NOVEMBER 28, 1780...TO FEBRUARY 28, 1807.

WITH THE

CONSTITUTIONS OF THE UNITED STATES OF AMERICA;
AND OF THE COMMONWEALTH, PREFIXED.

—
IN THREE VOLUMES.
—

TO WHICH IS ADDED, AT THE END OF THE SECOND VOLUME,

AN APPENDIX,

CONTAINING ACTS AND CLAUSES OF ACTS, FROM THE LAWS OF THE
LATE COLONY, PROVINCE AND STATE OF MASSACHUSETTS,
WHICH EITHER ARE UNREVISED OR RESPECT
THE TITLE OF REAL ESTATE.

Published by Order of the General Court.

VOLUME I.

BOSTON:

PRINTED BY J. T. BUCKINGHAM,

FOR THOMAS & ANDREWS AND MANNING & LORING.

—
JUNE, 1807.

An ACT to prevent Routs, Riots, and tumultuous Assemblies, and the evil Consequences thereof.

Preamble.

WHEREAS the provision already made by law for the preventing routs, riots, and tumultuous assemblies and the evil consequences thereof has been found insufficient :

Proclamation to be made among rioters.

SECT. 1. *Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,* That from and after the publication of this Act, if any persons to the number of twelve, or more, being armed with clubs, or other weapons ; or if any number of persons, consisting of thirty or more, shall be unlawfully, routously, riotously, or tumultuously assembled, any Justice of the Peace, Sheriff or Deputy-Sheriff of the county, or Constable of the town, shall, among the rioters, or as near to them as he can safely come, command silence while proclamation is making, and shall openly make proclamation in these or the like words :

Form.

COMMONWEALTH OF MASSACHUSETTS.
BY virtue of an Act of this Commonwealth, made and passed in the year of our LORD One thousand seven hundred and eighty-six, entitled, "An Act for suppressing routs, riots and tumultuous assemblies and the evil consequences thereof," I am directed to charge and command, and I do accordingly charge and command all persons, being here assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains inflicted by the said Act.

GOD save the COMMONWEALTH

If the persons assembled do themselves within one hour after proclamation made, or attempt to disperse, tempted to be made, as aforesaid, it shall be lawful for every officer, &c. such officer to command sufficient aid, and he shall seize such persons, who shall be had before a Justice of the Peace ; and the aforesaid Justice of the Peace, Sheriff or Deputy-Sheriff is hereby further empowered to require the aid of a sufficient number of persons in arms, if any of the persons assembled as aforesaid shall appear armed : And if any such person or persons shall be killed or wounded by reason of his or their resisting the persons endeavouring to disperse or seize them, the said Justice, Sheriff, Deputy-Sheriff, Constable and their assistants, shall be indemnified and held guiltless.

Penalty for refusing to assist the Sheriff or other officer. SECT. 2. *And be it further enacted,* That if any person being commanded by such Justice, Sheriff, Deputy-Sheriff or Constable, as aforesaid, shall refuse or neglect to afford the assistance required, and shall be convicted thereof upon the oath of either of the said officers so commanding or other legal evidence, he shall forfeit and pay a sum not less than *Forty Shillings,*

TAXES.

Nov. 8, An. 1786.

347

Shillings, nor exceeding *Ten Pounds*, to be recovered by indictment or presentment before the Supreme Judicial Court or any Court of General Sessions of the Peace, according to the aggravation of the offence ; to be paid into the publick treasury for the use of the Commonwealth.

SECT. 3. *And be it further enacted*, That all persons who, for the space of one hour after proclamation made or attempted to be made, as aforesaid, shall unlawfully, riotously and tumultuously continue together, or shall wilfully let or hinder any such officer, who shall be known or shall openly declare himself to be such, from making the said proclamation, shall forfeit all their lands, tenements, goods and chattels to this Commonwealth, or such part thereof as shall be adjudged by the Justices, before whom such offence shall be tried, to be applied towards the support of the government of this Commonwealth ; and shall be whipped thirty-nine stripes on the naked back at the publick whipping-post, and suffer imprisonment for a term not exceeding twelve months nor less than six months ; and once every three months during the said imprisonment receive the same number of stripes on the naked back at the publick whipping-post as aforesaid. And if any such person or persons, so riotously assembled, shall demolish or pull down, or begin to demolish or pull down, any dwelling-house or other house or parcel thereof ; any house built for publick uses ; any barn, mill, malt-house, store-house, shop or ship, he or they shall suffer the same pains and penalties as are before provided in this Act.

Provided always, That where there shall appear any circumstances to mitigate or alleviate any of the offences against this Act in the judgment of the Court, before which such offence shall be tried, it shall and may be lawful for the Justices of such Court to abate the whole of the punishment of whipping, or such part thereof as they shall judge proper ; any thing in this Act to the contrary notwithstanding.

SECT. 4. *And be it further enacted*, That this Act shall be read at the opening of every Court of General Sessions of the Peace by the Clerk of the said Court, and at the anniversary meeting of each town within this Commonwealth by the Town-Clerk thereof in *March* or *April* annually : And no person shall be prosecuted for any offence contrary to this Act, unless prosecution be commenced within twelve months after the offence committed.

[This Act passed October 28, 1786.]

50

The predicate conditions demonstrate that the individual carrying of arms in a peaceful, non-riotous manner was not a crime. And again, Duke Center for Firearms Law is spreading this false claim.⁵¹

46. “Francois Xavier Martin, A COLLECTION OF STATUTES OF THE PARLIAMENT OF ENGLAND IN FORCE IN THE STATE OF NORTH CAROLINA, 60-61 (Newbern 1792)” is not, despite an almost session law format, a North Carolina statute at all. The North Carolina Legislature tasked

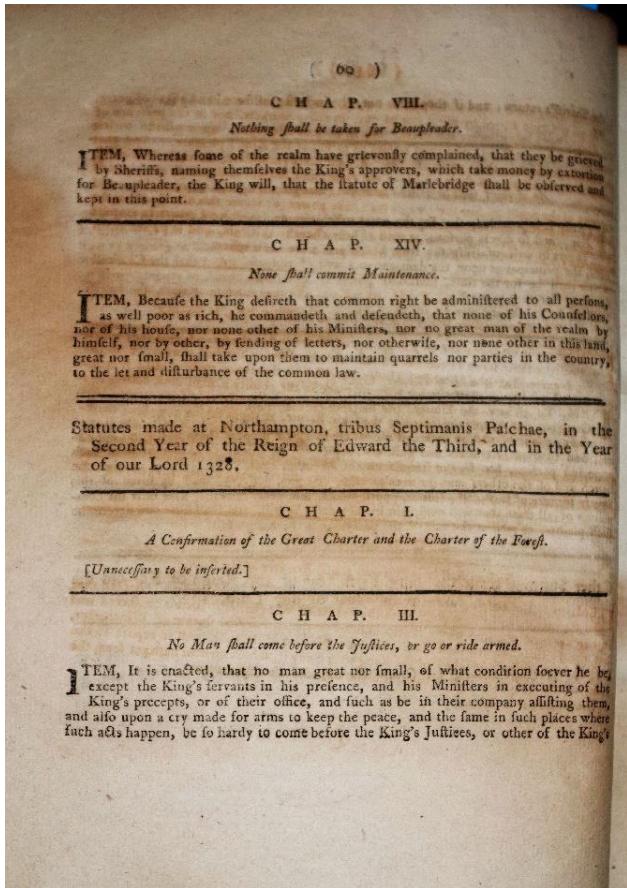
⁵⁰ 1 LAWS OF THE COMMONWEALTH OF MASSACHUSETTS 36-7 (1807).

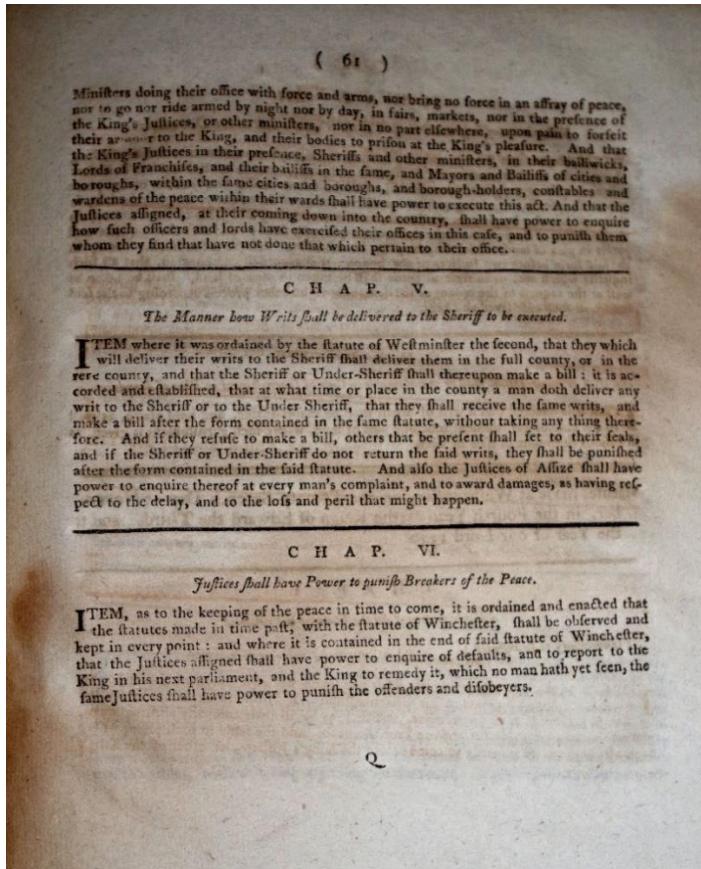
⁵¹ <https://firearmslaw.duke.edu/laws/1786-mass-sess-laws-an-act-to-prevent-riots-and-tumultuous-assemblies-and-the-evil-consequences-thereof/>, last accessed January 31, 2023.

Martin to sift through all *existing* British statutes that might have some applicability to North Carolina. “I began at Magna Charta. The old statutes, before that period are generally acknowledged to be rather a matter of mere curiosity, and scarcely an authentic record of any of them is extant.... I have inserted every statute unrepealed by subsequent acts, or which did not appear so glaringly repugnant to our system of government as to warrant its suppression.”⁵²

Martin included the Statute of Northampton (1328):

⁵² Xavier Martin, A COLLECTION OF STATUTES OF THE PARLIAMENT OF ENGLAND IN FORCE IN THE STATE OF NORTH CAROLINA, iii (1792).

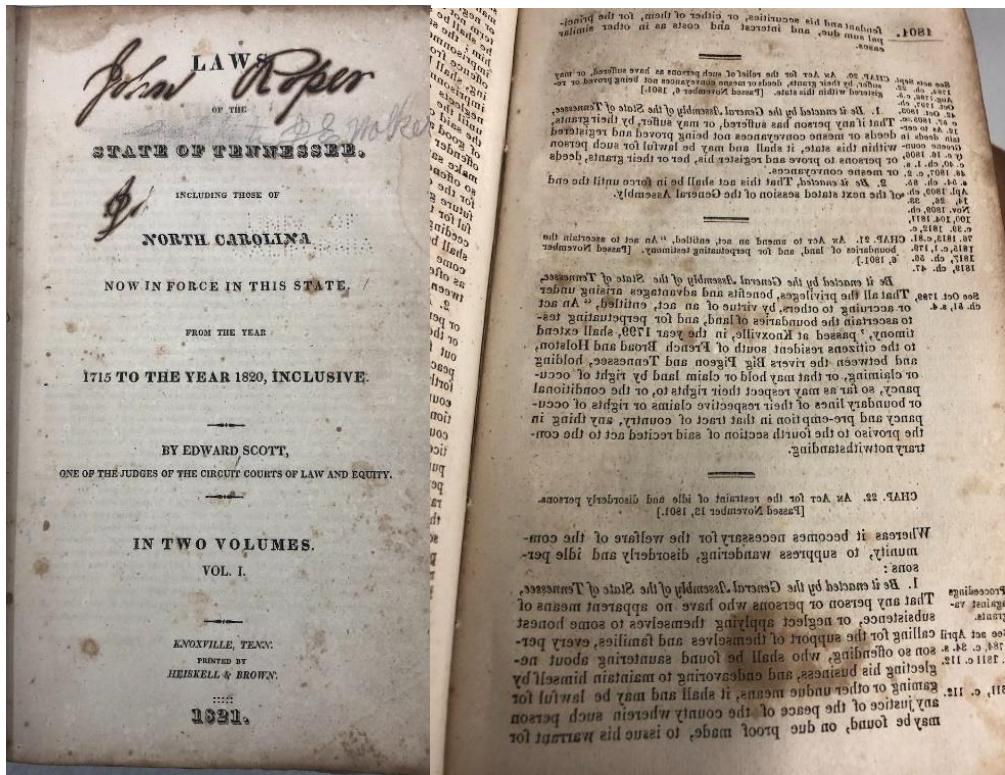


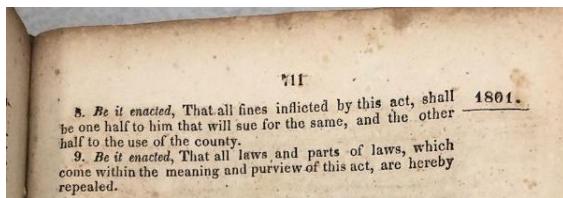
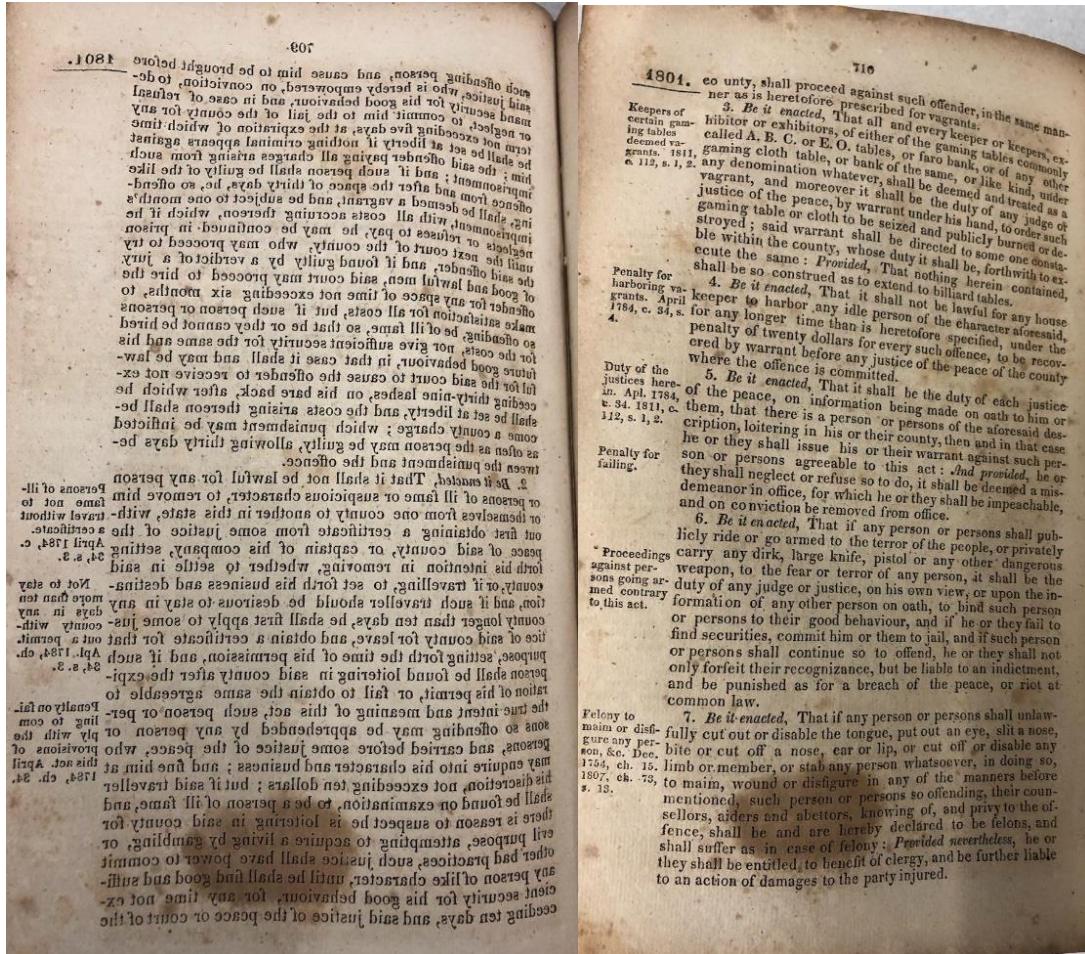


Curiously, when the North Carolina Supreme Court decided *State v. Huntly* (N.C. 1843), a case which charged the defendant under the Statute of Northampton, the opinion held that “whether this statute was or was not formerly in force in this State, it certainly has not been since the first of January, 1838, at which day it is declared in the Revised Statutes, (ch. 1st, sect. 2,) that the statutes of England or Great Britain shall cease to be of force and effect here.”⁵³ One might expect that if this statute had been adopted legislatively, as Spitzer claims, that it might have merited mention.

⁵³ *State v. Huntly*, 418, 420 (N.C. 1843).

47. Spitzer's last source in n. 126 purported to ban public carry: "Judge Edward Scott, Laws of the State of Tennessee: Including Those of North Carolina Now in Force in this State: From the Year 1715 to the Year 1820, Inclusive Page 710". This was hard to find. There are multiple copies online, but even when catalogued as volume 1, they all turn out to be volume 2. The only print copy in the U.S., perhaps anywhere, is at UC Berkeley Law Library.





This law intended to suppress “wandering, idle and disorderly persons.” It seems to be aimed at “persons who have no apparent means of subsistence, or neglect applying themselves to some honest calling for the support of themselves and families...” Section 6 at 710 is not a ban on carrying of arms but a strange hybrid of language from the Statute of Northampton and a surety bond for good behavior. Failure to provide such a bond, or continuing to “publicly ride or go

armed to the terror of the people, or privately carry any dirk, large knife, pistol or any other dangerous weapon" was the crime. Carrying done in a way not "to the terror of the people" was not unlawful.⁵⁴

Curiously, this law is not referenced in any of the knife law cases later in the 19th century and I believe that I have figured out why. It appears to have been substantially revised *without* section 6 in 1811:

Henry C. Harwood, Esq.
LAWS
OF THE

STATE OF TENNESSEE,

INCLUDING THOSE OF

NORTH CAROLINA

NOW IN FORCE IN THIS STATE.

FROM THE YEAR

1715 TO THE YEAR 1820, INCLUSIVE.

BY EDWARD SCOTT,

ONE OF THE JUDGES OF THE CIRCUIT COURTS OF LAW AND EQUITY.

IN TWO VOLUMES.

VOL. II.

KNOXVILLE, TENN.

PRINTED BY

HEISKELL & BROWN.

1821.

habitants on the waters of Cosby's creek, supposed to be in 1811.
Jefferson county, if any, and for the future the same shall be,
and they are hereby annexed to the said county of Cocke.

CHAP. 111. An Act to extend the charter of the Nashville Bank. (Passed November 11, 1811.) 1807, ch. 103.
s. 1. 1815, ch. 52. s. 1.

1. Be it enacted by the General Assembly of the State of Tennessee,
That the charter of the Nashville bank, shall be, and the
same is hereby prolonged and extended ten years, from and
after the time limited and appointed for the expiration of the
present charter, any law to the contrary notwithstanding.

CHAP. 112. An Act supplementary to an act entitled "An act for the re-
straint of idle and disorderly persons." (Passed November 21, 1811.)

1. Be it enacted by the General Assembly of the State of Tennessee, Duty of judges
That from and after the passage of this act, it shall be ~~as~~ ^{the} justices, sheriffs, &c.
the duty of all the judges of this state, and of every justice ^{1799, ch. 8.}
of the peace, sheriff or constable therein, to apprehend and ^{1801, ch. 22.}
bring before them or either of them, any idle or disorderly ^{1803, ch. 12.}
persons, who may be found lurking in the state, or in any ^{1817, ch. 61.}
town, or captain's company thereof, having, or on proof of & references.
having had in their possession any gambling table, or any
device whatever, for the enticement of any person to play or
gambol at, and on conviction, before any court of record hav-
ing cognizance thereof, it shall and hereby is directed to be
the duty of such judge or justice of the peace, forthwith to
commit to the common jail of such county, wherein such
person or persons may be found, and it shall be the duty of
such judge or justice forthwith to direct the sheriff of any
such county, or any constable, to sell as servants, all such
persons for the term of three months, the said officer giving
three days notice of the time and place of sale.

2. Be it enacted, That if said judge or justice, or any constable or sheriff, can by any means get the gambling table into ^{Gaming tables}
their possession, it shall be the duty of such judge or justice ^{1801, ch. 22.}
to direct the said sheriffs or constables to burn or destroy the ^{s. 3. 1817, ch. 61.}
same, and shall be authorised to summon a *posse comitatus* to
assist in the execution of this act, and have authority also to
break open or tear down any house, to get possession of said
gambling tables or devices.

3. Be it enacted, That this act shall be in force from and
after the first day of January next.

48. At ¶64, in defense of historical restrictions on fighting knives, Spitzer quotes Aymette v. State (Tenn. 1840) that such knives "are usually employed in private broils, and which are efficient only in the hands of the robber and the assassin." But he seems to have missed the surrounding sentences where the Court explained that the right to keep and bear arms was protected so that citizens "may keep arms to protect the public liberty, to keep in awe those who are in power,

⁵⁵ Judge Edward Scott, 2 LAWS OF THE STATE OF TENNESSEE: INCLUDING THOSE OF NORTH CAROLINA NOW IN FORCE IN THIS STATE: FROM THE YEAR 1715 TO THE YEAR 1820, INCLUSIVE 710 (1821).

and to maintain the supremacy of the laws and the constitution.” (This is the revolutionary understanding of the Second Amendment, well-articulated in FEDERALIST 46):

so the *arms*, the right to keep which is secured, are such as are usually employed in civilized warfare, and that constitute the ordinary military equipment. If the citizens have these arms in their hands, they are prepared in the best possible manner to repel any encroachments upon their rights by those in authority. They need not, for such a purpose, the use of those weapons which are usually employed in private broils, and which are efficient only in the hands of the robber and the assassin. These weapons would be useless in war.⁵⁶

Aymette was not exceptional in this understanding of the right to keep and bear arms as a revolutionary defense against an oppressive government: Arkansas Supreme Court Justice Lacy echoed Patrick Henry’s concerns about the division of “sword and purse” that were heard during the Virginia ratification debates:

If the Legislature have the custody of the people’s arms and the treasury of the State, what becomes of the separation and division of the political powers of the government? Are not these powers united in the same body of magistracy? And if this be the case, the balance of the Constitution is overthrown, and the State then possesses no real security for personal liberty. It is no answer to this argument, to say that the people may abuse the privilege or right of keeping and bearing arms. The Constitution thought and ordained it otherwise; and therefore it was deemed far safer to entrust the right to their own judgment and discretion, rather than to the will or ambition of the Legislature; and this right was excepted out of the general powers of the government, and declared inviolate.⁵⁷

The repeated refrain that “assault weapons” are “weapons of war” would mean under Aymette’s reasoning, the rifles and LCMs to be banned by Highland Park are protected arms (along with other military arms), even if fighting knives were not.

55. I am not done eviscerating⁵⁸ ¶64. “Further, the court added that the state law existed ‘to preserve the public peace, and protect our citizens from the terror which a wanton and unusual exhibition of arms might produce, or their lives from being endangered by desperadoes with concealed arms. . . .’” Is existing Illinois law insufficient to punish “wanton and unusual exhibition of arms” and criminal misuse of concealed weapons?

⁵⁶ Aymette v. State, 21 Tenn. (2 Humph.) 154, 158 (1840).

⁵⁷ State v. Buzzard, 4 Ark. 18, 36 (1842) (diss.).

⁵⁸ That word chosen *very* deliberately.

49. Spitzer ¶66 quotes Nunn v. State (Ga. 1846) upholding of a concealed carry ban and that the purpose of the law was “to guard and protect the citizens of the State against the unwarrantable and too prevalent use of *deadly weapons.*” [emphasis in Nunn] But the rest of the Nunn decision seems to have gone over Spitzer’s head:

The language of the *second* amendment is broad enough to embrace both Federal and State governments—nor is there anything in its terms which restricts its meaning... Is this a right reserved to the *States* or to *themselves*? Is it not an unalienable right, which lies at the bottom of every free government? We do not believe that, because the people withheld this arbitrary power of disenfranchisement from Congress, they ever intended to confer it on the local legislatures. This right is too dear to be confided to a republican legislature.⁵⁹...

The right of the whole people, old and young, men, women and boys, and not militia only, to keep and bear *arms* of every description, and not *such* merely as are used by the *militia*, shall not be *infringed*, curtailed, or broken in upon, in the smallest degree; and all of this for the important end to be attained: the rearing up and qualifying a well-regulated militia, so vitally necessary to the security of a free State. Our opinion is, that any law, State or Federal, is repugnant to the Constitution, and void, which contravenes this *right*, originally belonging to our forefathers, trampled under foot by Charles I. and his two wicked sons and successors, reestablished by the revolution of 1688, conveyed to this land of liberty by the colonists, and finally incorporated conspicuously in our own *Magna Charta!* And Lexington, Concord, Camden, River Raisin, Sandusky, and the laurel-crowned field of New Orleans, plead eloquently for this interpretation! [emphasis in the original]⁶⁰

The evidence I found when researching concealed carry bans in Georgia revealed a severe public violence problem. Nonetheless, the Georgia Supreme Court delivered a powerful defense of the right to “keep and bear *arms* of every description.”

50. Spitzer at ¶67 quotes the Texas Supreme Court’s description of a Bowie knife as “an exceeding destructive weapon.” The following sentences have a degree of panic that mirrors the current panic about “assault weapons” (and not without reason in either era):

It is difficult to defend against it, by any degree of bravery, or any amount of skill. The gun or pistol may miss its aim, and when discharged, its dangerous character is lost, or diminished at least. The sword may be parried. With these weapons men fight for the sake of the combat, to satisfy the laws of honor, not necessarily with the intention to kill, or with a certainty of killing, when the intention exists. The bowie-knife differs from these in its device and design; it is the instrument of almost certain death.⁶¹

⁵⁹ Nunn v. State, 1 Ga. 243, 250, 251 (1846).

⁶⁰ *Id.*

⁶¹ Cockrum v. State, 24 Tex. 394, 403 (1859).

The Texas Supreme Court chose to uphold the enhanced sentence for criminal misuse by admitting: “The right to carry a bowie-knife for lawful defense is secured, and must be admitted.”⁶² Instead:

May the State not say, through its law, to the citizen, “this right which you exercise, is very liable to be dangerous to the rights of others, you must school your mind to forbear the abuse of your right, by yielding to sudden passion; to secure this necessary schooling of your mind, an increased penalty must be affixed to the abuse of this right, so dangerous to others.”⁶³

Cockrum did not even deny the right to *carry* this weapon of “certain death.” Cockrum is utterly contrary to Spitzer’s claim in ¶68:

All of these cases underscore the courts’ recognition of the dangerous nature and nefarious use of Bowie knives not only by their characterizations of them, but by the fact that they are permissibly treated in the same restrictive and prohibitory manner in law as other dangerous, deadly weapons including pistols and various named clubs.

51. ¶69 asserts that “In the 1830s, at least six states enacted laws barring the carrying of Bowie knives by name.” and directs the reader to Exhibit C, titled Dangerous Weapon Restrictions. There he lists Bowie-knife bans, supposedly “by name.” He lists Texas 1856, but as examination of Cockrum shows, and review of the statute in the 1859 digest of Texas statutes shows, this was not a ban on either concealed or open carry, but a sentence enhancement for manslaughters committed with a Bowie knife.

⁶² Id.

⁶³ Cockrum v. State, 24 Tex. 394, 403 (1859).

GENERAL STATUTE LAWS

OF THE STATE OF TEXAS

STATE OF TEXAS:

TO WHICH ARE SUBJOINED

THE REPEALED LAWS OF THE REPUBLIC AND STATE OF TEXAS,

BY, THROUGH, OR UNDER WHICH RIGHTS HAVE ACCRUED:

ALSO,

THE COLONIZATION LAWS

OF

MEXICO, COAHUILA AND TEXAS, WHICH WERE IN FORCE BEFORE THE DECLARATION OF INDEPENDENCE BY TEXAS.

PREPARED BY

WILLIAMSON S. OLDHAM AND GEORGE W. WHITE.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

AUSTIN, TEXAS:

PRINTED BY JOHN MARSHALL & CO., AT THE STATE GAZETTE OFFICE.

1859.

Act of Aug. 28, 1856. ART. 610. If any person be killed with a *bowie knife* or *dagger*, under circumstances which would otherwise render the homicide a case of manslaughter, the killing shall nevertheless be deemed murder, and punished accordingly.

Definition of. ART. 611. A "bowie knife" or "dagger," as the terms are here and elsewhere used, means any knife intended to be worn upon the person, which is capable of inflicting death, and not commonly known as a pocket knife.

64

V. What Other Technologies Can Be Similarly Classified as “Beyond the Framers’ Imagination”?

52. If you were tell Ben Franklin that freedom of the press would someday include presses that could prints thousands of pages per hour, would his reaction have been: “Assault newspapers! You could crush small newspapers like mine out of business. You could spread disinformation at thousands of pages per minute!” The Bill of Rights protects certain principles: the freedom to speak your mind, on a street corner haranguing a few neighbors, or a webpage from which you can annoy most of the world; freedom from arbitrary warrantless searches, in a colonial style house, a motor home, a car, or a phone line; the freedom to be armed for the unlikely but not unknown situation of a government that either actively persecutes minorities or simply ignores mob rule. Every right has its associated risks: child pornography; libel; slander; criminals escaping punishment by a meticulous protection of their rights to due process and privacy.

⁶⁴ A DIGEST OF THE GENERAL STATUTE LAWS OF THE STATE OF TEXAS: TO WHICH ARE SUBJOINED THE REPEALED LAWS OF THE REPUBLIC AND STATE OF TEXAS... Art. 610 (1859).

VI. Summary

53. Professor Spitzer attempts to justify the Highland Park ordinance by pointing to “restrictions on fully automatic (most famously the Tommy gun) and semi-automatic firearms, with detachable ammunition feeding devices, both from the early twentieth century.” He fails. Automatic weapon restrictions are indeed present *after* the year Bruen sets for determining if a law or analogous restriction takes a particular arm out of Second Amendment protection. Even the primary proponent of the National Firearms Act of 1934, U.S. Attorney General Cummings, admitted that they were using a tax scheme because they knew that a more direct regulatory measure was unconstitutional and he did not disagree with a Representative’s reference to the right to keep and bear arms as the reason for this workaround.

54. Only a few of the statutes that he references restrict either semiautomatic arms or limit magazine capacity. His misicitations and misrepresentations of these statutes seems a bit beyond random error. Even the statutes that refer to ten round magazines are only *in conjunction* with a machine gun. *All* are after 1868.

55. Repeating firearms were in commercial distribution by 1868. The Congress made no attempt to limit the Second Amendments rights incorporated through the Fourteenth Amendment.

56. As I observed at the beginning, untreated mental illness started this current campaign and many of the subsequent mass murders have had at their root mental illness which was unseen, ignored, or where the laws or policies made involuntary commitment impossible.⁶⁵ Fix the root problem or mass murderers will use the weapons they have historically used in the United States:

⁶⁵ See Clayton E. Cramer, *Mental Illness and the Second Amendment*, 46 CONN. L.R. 4:1301 (2014) for an examination of this problem and Clayton E. Cramer, *MY BROTHER RON: A PERSONAL AND SOCIAL HISTORY OF THE DEINSTITUTIONALIZATION OF THE MENTALLY ILL* (2012) for how we got here.

arson,⁶⁶ vehicles,⁶⁷ explosives,⁶⁸ hammers,⁶⁹ axes,⁷⁰ poison,⁷¹ aircraft,⁷² and train derailments.⁷³

Or they might use the weapons mass murderers use in other nations: arson;⁷⁴ vehicles;⁷⁵ explosives,⁷⁶ sharp objects,⁷⁷ hammers;⁷⁸ poison gas.⁷⁹

29. As long as we as a society focus on methods rather than causes, we are engaged in unneeded polarization while still not solving the problem.

⁶⁶ 3 Teamsters Charged in San Juan Hotel Fire,” *Chicago Tribune*, Feb. 4, 1988, <https://www.chicagotribune.com/news/ct-xpm-1988-02-04-8803270617-story.html>, last accessed November 24, 2018 (97 dead); Ralph Blumenthal, *Fire in the Bronx; 87 Die in Blaze at Illegal Club; Police Arrest Ejected Patron; Worst New York Fire Since 1911*, *NEW YORK TIMES*, Mar. 26, 1990 (87 dead); Phil Luciano, *9-year-old arraigned on murder charges in deadly Goodfield arson fire*, *PEORIA JOURNAL STAR*, Oct. 21, 2019.

⁶⁷ Lauren del Valle, Ray Sanchez and Eric Levenson, *Terror suspect accused of killing 8 people on NYC bike path still believes in ISIS, defense attorney says*, CNN, January 9, 2023.

⁶⁸ FBI, *Oklahoma City Bombing*, <https://www.fbi.gov/history/famous-cases/oklahoma-city-bombing>, last accessed January 31, 2023 (168 dead); *Fate Saves Scores in Blast When Maniac's Plot Kills 43*, [Washington, D.C.] *EVENING STAR*, May 19, 1927, 1; *Los Angeles, on Election Eve, in Ferment Over Confession of the McNamaras*, [Chicago, Ill.] *THE DAY BOOK*, Dec. 2, 1911, 1 (21 dead); *Seven Detectives and Three Miners Dead*, *SEATTLE STAR*, Jul. 26, 1912, 1 (10 dead).

⁶⁹ *A Family Slain*, *KANSAS CITY JOURNAL*, Mar. 4, 1899, 1 (5 dead).

⁷⁰ *Five Battered With An Axe*, [Keokuk, Ia.] *DAILY GATE CITY*, Oct. 17, 1911, 1 (5 dead); *Mystery of 30 Axe-Murders is Believed Near Its Solution*, *ALBUQUERQUE MORNING JOURNAL*, Mar. 22, 1915, 1 (police believed one man murdered 29 people in five families over three years).

⁷¹ *A Modern Borgia*, *NASHVILLE UNION AND AMERICAN*, Oct. 27, 1868, 1 (the maid murdered a family of seven).

⁷² FBI, *CRIME IN THE UNITED STATES: 2001, Section 5*, <https://ucr.fbi.gov/crime-in-the-u-s/2001/01sec5.pdf> (3047 dead); *Id.*, (184 dead); *Id.*, (40 dead); Judith Cummings, *Kin of Suspect Defiant and Contrite*, *New York Times*, Dec. 11, 1987 (44 dead).

⁷³ *Crack Flyer Jumps Track*, [De Kalb, Illinois] *DAILY CHRONICLE*, Mar. 17, 1941, 1 (5 dead).

⁷⁴ *A Decade On, Childers Remembers Hostel Fire Tragedy*, *BRISBANE [Australia] TIMES*, Jun. 23, 2010 (15 dead); Candace Sutton, *Man Who Murdered 11 People in Nursing Home Fire 'Frothed At The Mouth' From Drugs And 'Put Nails In Tyres And Poured Paint' Over Boss's Car, Inquest Hears*, [U.K.] *DAILY MAIL*, Sep. 8, 2014. (11 dead).

⁷⁵ *Toronto is the most recent of many deliberate attacks involving vehicles*, *USA TODAY*, Apr. 23, 2018 (10 dead in Toronto attack, 14 dead in Barcelona, Spain, 8 on London Bridge, 12 in Berlin, Germany) (10 dead); *Nice attack: Trial for Bastille Day massacre which killed 86 begins*, *BBC*, Sep. 5, 2022 (86 dead); *Australian who rammed and killed six pedestrians jailed for life*, *REUTERS*, Feb. 21, 2019 (6 dead); Alex Johnson, *A Short History of Vehicles Being Used as Deadly Weapons*, *NBC News*, Jul. 15, 2016 (8 dead).

⁷⁶ Andrew Higgins and Kimiko De Freytas-Tamura, *In Brussels Bombing Plot, a Trail of Dots Not Connected*, *NEW YORK TIMES*, March 26, 2016 (33 dead); Sylvia Hui, *Bomber's brother gets 55 years for Manchester concert attack*, *Associated Press*, Aug. 20, 2020 (22 dead)

⁷⁷ Jason Van Rassel, *Police officer's son charged in city's worst mass murder*, *Calgary [Alberta] Herald*, Apr. 17, 2014 (5 dead); Jonathan Pearlman, *Eight Children Murdered In Mass Stabbing In Australia*, [U.K.] *Telegraph*, Dec. 19, 2014 (8 dead); Robert Foyle Hunwick, *Why Does China Have So Many School Stabbings?*, *New Republic*, Nov. 2, 2018 (summarizing 14 knife mass murders in two incidents); David Mercer, *Canada mass stabbing: Trudeau urges public to 'be careful' over two men suspected of killing 10 people*, *SKY NEWS*, Sep. 5, 2022 (10 dead).

⁷⁸ Jamelle Wells, *Robert Xie Trial: Lin Family 'Murdered With Hammer Bought From \$2 Shop*, *ABC [Australia]*, May 12, 2014 (5 dead)

⁷⁹ *Japan marks 25 years since deadly Aum sarin attack on Tokyo subway*, *Japan Times*, Mar. 20, 2020 (14 dead).

Clayton E. Cramer
24408 Tombstone Ridge Ct.
Middleton, ID 83644
(208) 761-5916
clayton@claytoncramer.com
<http://www.claytoncramer.com>

EDUCATION:

June, 1998	Sonoma State University, Rohnert Park, California M.A. in History <i>Master's Thesis: "Concealed Weapon Laws of the Early Republic"</i>
June, 1994	B.A. in History <i>Honors: cum laude and With Distinction</i>

AWARDS:

1993	Association for Education in Journalism and Mass Communication Ethics Prize First Place, Undergraduate Division
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TEACHING EXPERIENCE:

Fall, 2017 – present ***Adjunct Faculty:*** College of Western Idaho, Nampa, teaching **Western Civilization I, U.S. History I, History of the Fourteenth Amendment.**

Fall, 2014 – Recovering from stroke

Spring,
2017

Spring,
2010 – ***Adjunct Faculty:*** College of Western Idaho, Nampa, teaching **Western Civilization I, U.S. History I.**

Spring,
2014

Fall, 2009 – Summer 2010 ***Adjunct Faculty:*** ITT Technical Institute, Boise, teaching **State and Local Government and Introduction to Computers.**

Fall, 2003 ***Adjunct Faculty:*** Boise State University, teaching **U.S. Constitutional History** and at George Fox University (Boise Center), teaching **America and the World.**

1996 **Teaching Assistant:** Assisted Professor Peter Mellini in his course “Twentieth Century World.” I graded quizzes, exams, and answered weekly written questions from students. I also prepared and lectured about the rise of totalitarianism in the period between the world wars.

BOOKS:

Lock, Stock, and Barrel: The Origins of America Gun Culture
Praeger Press, 2018

Social Conservatism in An Age of Revolution: Legislating Christian Morality in Revolutionary America
CreateSpace, 2016

Historical Evidence Concerning Climate Change: Archaeological and Historical Evidence That Man Is Not the Cause
CreateSpace, 2016

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Armed America: The Remarkable Story of How and Why Guns Became as American as Apple Pie
Nelson Current, 2006

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Praeger Press, 1999

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Greenwood Press, 1997

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Krause Publishing, 1995

For The Defense of Themselves and the State: The Original Intent and Judicial Interpretation of the Right to Keep and Bear Arms
Praeger Press, 1994

By The Dim and Flaring Lamps: The Civil War Diary of Samuel McIlvaine, editor
Library Research Associates, Inc., 1990

SELECTED PUBLICATIONS:

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“Ethical Problems of Mass Murder Coverage in the Mass Media.” *Journal of Mass Media Ethics* 9:1 [Winter, 1993-94] 26-42.

A comprehensive list of popular magazine articles would run to many pages; for a complete list see <http://www.claytoncramer.com/popular/popularmagazines.htm>.

CONFERENCES & EXPERT TESTIMONY:

Ohio State Senate Judiciary Committee, March 22, 1995.

Michigan House of Representatives Judiciary Committee, December 5, 1995

American Society of Criminology, San Diego, Cal., November, 1997. “Fear And Loathing In Whitehall: Bolshevism And The Firearms Act Of 1920.”

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Assisted in research and writing of Respondent's Brief and Academics for the Second Amendment and Claremont Institute amicus briefs for *D.C. v. Heller* (2008).

Panelist on "Up in Arms: The Second Amendment in the Modern Republic" University of Connecticut School of Law, November 15, 2013.

WORKS CITED IN COURT DECISIONS:

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"What Did 'Bear Arms' Mean in the Second Amendment?", cited in *D.C. v. Heller* (2008). In addition, significant parts of Justice Scalia's opinion are derived from amicus briefs that I helped to research and write.

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A comprehensive and up to date list can be found at <http://claytoncramer.com/scholarly/journals.htm#citations>.

LANGUAGES:

Very basic reading competence in German.

OTHER SKILLS:

I have 35 years of experience as a computer software engineer, including embedded telecommunications equipment development, web page creation and maintenance. I also have an unusually detailed knowledge of the physical sciences (for an historian), a deep interest in the history of science and technology, and how both influence society.